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INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

HEARINGS BEFORE THE TEMPORARY NATIONAL ECONOMIC COMMITTEE CONGRESS OF THE UNITED STATES SEVENTY-SIXTH CONGRESS THIRD SESSION PURSUANT TO

Public Resolution No. 113 (Seventy-fifth Congress)

AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO
MAKE A FULL AND COMPLETE STUDY AND INVESTIGA-
TION WITH RESPECT TO THE CONCENTRATION OF
ECONOMIC POWER IN, AND FINANCIAL CONTROL
OVER, PRODUCTION AND DISTRIBUTION
OF GOODS AND SERVICES

. PART 24

INVESTMENT BANKING

GOLDMAN, SACHS & CO.
LEHMAN BROTHERS
SMITH, BARNEY & CO.
KUHN, LOEB & CO.
GLORE, FORGAN & CO.

THE FINANCING OF
CLEVELAND-CLIFFS IRON CO.
STANDARD GAS & ELECTRIC CO.
SHELL UNION OIL CORPORATION

CONCENTRATION IN THE MANAGEMENT, UNDERWRITING
AND SALE OF REGISTERED BOND ISSUES

JANUARY 8, 9, 10, 11, AND 12, 1940

Printed for the use of the Temporary National Economic Committee

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(Created pursuant to Public Res. 113, 75th Cong.)

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¹ On file with the Committee.

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¹ Marked for identification only.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1833. Memorandum by Lewis L. Strauss, of Kuhn, Loeb & Co., relative to the meeting at B. A. Tompkins' office regarding proposed financing of Cleveland-Cliffs Iron Co.-----	12451	12753
1834. Letter, dated June 28, 1935, from B. A. Tompkins to E. B. Greene, regarding the underwriting group to handle Cleveland-Cliffs Iron Company financing.-----	12456	12754
1835. Letter, dated July 2, 1935, from E. B. Greene to B. A. Tompkins regarding disappointment of the terms upon which Cleveland-Cliffs Iron Company bonds are to be handled.-----	12456	12755
1836. Memorandum, dated July 8, 1935, by B. A. Tompkins to Monroe Gutman of Lehman Brothers, and others, containing three items supplementing previous memo ["Exhibit No. 1833"] regarding Cleveland-Cliffs Iron Company financing.-----	12457	12457
1837. Memorandum, dated August 28, 1935, by Dana Kelley, Bankers Trust Company, regarding meeting with Cleveland-Cliffs Iron Company underwriting group relative to Mr. Greene's report that the management ment had decided to abandon the Cliff's merger plan and the change in financing plans which followed.-----	12458	12756
1838. Letter, dated January 5, 1940, from Lehman Brothers to Peter R. Nehemkis, Jr. enclosing stipulation for six documents.-----	12458	12756
Stipulation covering six letters that were prepared, received, or sent as the case may be from Lehman Brothers.-----	12458	12757
1839. Letter, dated October 28, 1935, from Lehman Brothers to Hayden, Stone & Co., confirming understanding regarding Cleveland-Cliffs Iron Company financing.-----	12458	12757
1840. Letter, dated October 28, 1935, from Lehman Brothers to Field, Gore & Co., confirming understanding regarding Cleveland-Cliffs Iron Company financing.-----	12458	12758
1841. Letter, dated October 28, 1935, from Lehman Brothers to Kuhn, Loeb & Co., confirming understanding regarding Cleveland-Cliffs Iron Company financing.-----	12458	12758
1842. Memorandum, dated December 2, 1935, by M. C. Gutman to Douglas Dimond, both of Lehman Brothers, relative to Mr. Tompkins' request for position in Cleveland-Cliffs Iron Company financing for C. D. Barney & Co.-----	12458	12759
1843. Extract from registration statement of Cleveland-Cliffs Iron Co. for \$16,500,000 of 1st mtge. 4½'s of 1950, showing participations in a bank loan of \$5,000,000 to supplement the bond issue.-----	12461	12759
1844. Letter, dated December 18, 1935, from B. A. Tompkins to E. B. Greene regarding sub-participation in bank loan supplementing The Cleveland-Cliffs Iron Company bond financing.-----	12462	12760
1845. Letter, dated November 22, 1935, from Kuhn, Loeb & Co. to Lehman Brothers, regarding the sharing of commissions in sale of 10,000 shares of Republic Iron & Steel common stock by Cleveland-Cliffs.-----	12466	12761
1846. Memorandum, dated August 24, 1936, by M. C. Gutman to Mr. I. Sack, both of Lehman Brothers, relative to sharing of commissions on sale of Republic Iron & Steel common stock for Cleveland-Cliffs.-----	12466	12761

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1847-1. Extract from registration statement, showing agreement dated October 31, 1935, between Cleveland-Cliffs Iron Company and Kuhn, Loeb & Co. and others with regard to the sale of 20,000 shares of Republic Steel Corporation common stock-----	12467	12761
1847-2. Extract from registration statement, showing agreement dated October 31, 1935, between McKinney Steel Holding Company and Kuhn, Loeb & Co. and others, with regard to the sale of \$5,500,000 principal amount of Republic Steel Corporation purchase money first mortgage convertible 5½% bonds due November 1, 1954-----	12467	12762
1847-3. Extract from registration statement, showing agreement dated October 31, 1935, between McKinney Steel Holding Company and Kuhn, Loeb & Co. and others, with regard to the sale of 10,000 shares of 6% cumulative convertible prior preference Series A stock of Republic Steel Corporation-----	12467	12763
1848. Copy of letter dated May 22, 1930, from Kuhn, Loeb & Co. to J. R. Swan, Guaranty Company of New York confirming agreement between Guaranty Trust Co. and Kuhn, Loeb relative to future financing by American Smelting and Refining Company-----	12468	12764
1849. Letter, dated May 26, 1930, from J. R. Swan to Kuhn, Loeb & Co. regarding agreement between Guaranty Company and Kuhn, Loeb & Co. relative to future financing by American Smelting and Refining Company-----	12468	12764
1850. Letter, dated May 21, 1930, from Frank P. Shepard, Guaranty Company, to Kuhn, Loeb & Co. regarding 175,000 shares of American Smelting and Refining Company 6% cumulative second preferred stock, confirming Kuhn Loeb's 22% interest on original terms in purchase of this stock-----	12468	12765
1851. Copy of letter dated May 21, 1930, from J. R. Swan, Guaranty Company, to F. H. Brownell, Chairman of the Board, American Smelting and Refining Company, enclosing prospectus of the second preferred stock to be offered at 103-----	12468	12765
1852-1. Letter, dated July 19, 1937, from H. T. Pritchard, President, Indianapolis Power & Light Company, to Lehman Brothers giving to Lehman Brothers the right to head the syndicate, authority to act as sole agent in Indianapolis Power & Light Company financing-----	12468	12766
1852-2. Letter, dated July 21, 1937, from O. C. Johnston, Simpson, Thacher & Bartlett, to Robert Lehman, Lehman Brothers, relative to proposed reply to Indianapolis Power & Light Company regarding contemplated financing-----	12468	12766
1852-3. Copy of letter dated July 21, 1937, from Robert Lehman to H. T. Pritchard, president, Indianapolis Power & Light Company accepting position to head Indianapolis Power & Light Company financing-----	12468	12766
1853. Copy of letter dated May 24, 1938, from J. F. F. (John F. Fennelly), Glore, Forgan & Co., to J. Russell Forgan, Glore, Forgan & Co., regarding views of Charles Glore relative to Indianapolis Power & Light Company financing and position of Lehman Brothers in this financing-----	12468	12767

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Intro- duced at page	Appears on page
1854-1. Memorandum, dated June 26, 1939, by Joseph A. Thomas, Lehman Brothers, regarding agreement between Lehman Brothers and Goldman Sachs and The First Boston Corporation on Indianapolis Power & Light Company financing and future financing of subsidiary companies of Utilities Power & Light Co.	12468	12768
1854-2. Letter, dated June 26, 1939, from Joseph A. Thomas to G. D. Woods, The First Boston Corporation, putting in writing the agreement regarding the financing or refinancing of Indianapolis Power & Light Company between Lehman Brothers, Goldman, Sachs & Co. and The First Boston Corporation having equal percentages.	12468	12768
1854-3. Letter, dated June 26, 1939, from Joseph A. Thomas to Sidney Weinberg, Goldman, Sachs & Co. putting in writing the agreement regarding the financing or refinancing of Indianapolis Power & Light Company between Lehman Brothers, Goldman, Sachs & Co., and The First Boston Corporation having equal percentages.	12468	12769
1855-1. Letter, dated July 11, 1938, from Floyd Odlum, Atlas Corporation, to Robert Lehman regarding Lehman Brothers' position in proposed financing of Indianapolis Power & Light Company and suggesting better treatment for other firms.	12468	12769
1855-2. Copy of letter dated July 13, 1938, from J. A. Thomas to Floyd B. Odlum setting forth the considerations which prompted Lehman Brothers to act as they did in the Indianapolis Power & Light Company financing.	12468	12770
1855-3. Letter, dated July 13, 1938, from F. B. Odlum to J. A. Thomas regarding Shields & Company dissatisfaction with their position in Indianapolis Light & Power Company financing.	12468	12771
1855-4. Letter, dated July 18, 1938, from F. B. Odlum to J. A. Thomas requesting the Shields & Company matter be straightened out with reasonable satisfaction.	12468	12771
1856. Transcription of telephone conversation on October 20, 1932, between J. A. W. Iglehart, Glore, Forgan & Co., and P. N. Russell, N. W. Harris & Co., regarding New York State Electric & Gas financing.	12468	12772
1857-1. Letter, dated January 5, 1940, from Arthur H. Dean, Sullivan & Cromwell, to Peter R. Nehemkis, Jr., authorizing use of certain documents for the record relating to New York State Electric & Gas Corp. financing.	12475	12773
1857-2. Memorandum, dated January 25, 1937, by G. D. Woods, The First Boston Corporation, regarding inclusion of Lehman Brothers in underwriting group for issues of New York State Electric & Gas Corporation and other subsidiaries of Associated Gas & Electric Company.	12475	12774
1857-3. Letter, dated January 25, 1937, from M. C. Gutman, Lehman Brothers, to The First Boston Corporation, enclosing memorandum embodying understanding on financing of New York State Electric & Gas Corp. and other financing of the Associated Gas & Electric systems.	12475	12775
1857-4. "Memorandum regarding relationship of The First Boston Corporation and Lehman Brothers in connection with Associated Gas & Electric financing," dated January 25, 1937.	12475	12775

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Intro- duced at page	Appears on page
1857-5. Letter, dated January 29, 1937, from George D. Woods, The First Boston Corporation, to Lehman Brothers, correcting memorandum concerning Associated Gas & Electric Co. financing-----	12475	12775
1858. Memorandum, dated July 27, 1934, by J. M. Schiff, Kuhn, Loeb & Co., regarding discussion with M. L. Freeman relating to possible financing of Armstrong of Armstrong Corp Company-----	12484	12776
1859. Memorandum, dated November 18, 1927, by Jerome J. Hanauer, Kuhn, Loeb & Co., regarding discussion with Seward Prosser, Bankers Trust Co., explaining efforts made by Kuhn, Loeb & Co. to be sure they were not competing with Bankers Trust Co. for financing of Youngstown Sheet & Tube Co. Memorandum, dated November 18, 1927, by Jerome J. Hanauer giving telephone statement by James A. Campbell, president, Youngstown Sheet & Tube Co., regarding negotiations with Bankers Trust Co. for bond issue....	12487	12776
1860. Extracts from diary entries, dated October 22, 1934, to July 24, 1935, by John W. Cutler and J. N. Land, Edward B. Smith & Co., regarding Armstrong Cork Company financing-----	12508	12779
1861. Memorandum, dated February 4, 1935, initialed W. W. (Webb Wilson, Edward B. Smith & Co.) entitled "Outline of Guaranty Company of New York's relationship to public financing of The American Rolling Mill Company"-----	12509	12781
1862-1. Memorandum, dated December 16, 1937, by K. Weisheit to J. W. Cutler, Edward B. Smith & Co., referring to inquiry by Fred Krayser, Brown, Harri- man & Co., Inc., as to desires of Edward B. Smith & Co. on formation of account for purchase and sale of rights to preferred stock of Dow Chemical Co.	12510	12781
1862-2. Memorandum, dated July 23, 1935, by C. L. Austin, Edward B. Smith & Co., summarizing discussions with officials of Pure Oil Co. on proposed refunding, and commenting on various items in registration statement for \$32,000,000 15 year 4¼% notes, due 1950..	12510	12782
1863. Memorandum, undated, by C. L. Austin, Mellon Securities Corporation, discussing reasons for selection of underwriters of \$25,000,000 Koppers Company first mortgage and collateral trust bonds, series A, 4%, due November 1, 1951-----	12511	12787
1864. Memorandum, dated August 17, 1936, by C. L. Austin, Mellon Securities Corporation, regarding invitations to Morgan Stanley & Co., Inc., and Edward B. Smith & Co. to participate in Jones & Laughlin Steel Corporation financing. Memoranda, dated October 29, 1935, and November 8, 1935, by Frank R. Denton, Melloff Securities Corporation, relating to deferring the Jones & Laughlin Steel Corporation bond issue and discussions with Morgan Stanley & Co., Inc., and Edward B. Smith Co.	12511	12788
1865. Memorandum, dated October 18, 1934, by C. L. Austin, then of Edward B. Smith & Co., giving list obtained from the Guaranty Co., of purchase group members in Wilson & Co., Inc., note offering in January 1927 and in offering of first mortgage bonds in April 1921....	12514	12789

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1866-1. Memorandum, dated September 10, 1934, by C. L. Austin to Joseph R. Swan, Edward B. Smith & Co., regarding possibility of recapitalization of Wilson & Co., Inc., and suggesting approach to the company through E. A. Potter, Jr.	12515	12790
1866-2. Memorandum, dated September 5, 1934, by Herman Safro to Karl Weisheit, Edward B. Smith & Co., reporting discussion with Paul Appenzeller regarding plan of recapitalization approved by Wilson & Co., Inc.	12515	12790
1867. Copy of letter dated July 8, 1935, from Faris R. Russell, White, Weld & Co., to John W. Cutler, Edward B. Smith & Co., containing chronological history of discussions regarding position of White, Weld & Co., in Wilson & Co. issue of July 1935 and their failure to be included. (Carbon copy of "Exhibit No. 1886.")	12517	12791
1868. Letter, dated February 25, 1935, from M. L. Freeman to Gurdon Wattles, White, Weld & Co., giving financial position of Wilson & Co., Inc., and referring to discussions with its president concerning bond issue.	12519	12792
1869. Copy of letter, dated February 21, 1935, from Edward Foss Wilson, president, Wilson & Co., Inc., to M. L. Freeman expressing willingness to discuss sale of bonds.	12519	12793
1870. Memorandum, dated February 26, 1935, by G. W. Wattles to Mr. Timpson, White, Weld & Co., regarding M. L. Freeman's proposal on Wilson & Co. refunding issue and attitude of two insurance companies toward purchase of the bonds.	12519	12793
1871. Telegram, dated February 27, 1935, from M. L. Freeman to E. F. Wilson, president, Wilson & Co., Inc., suggesting meeting with bankers on Wilson & Co. financing.	12519	12794
1872. Copy of telegram, dated February 27, 1935, from E. F. Wilson, president, Wilson & Co., Inc., to M. L. Freeman stating that J. D. Cooney, vice president, will visit New York and discuss financing.	12519	12794
1873. Letter, dated February 28, 1935, from M. L. Freeman to Gurdon W. Wattles, White, Weld & Co., enclosing copies of communications between M. L. Freeman and E. F. Wilson.	12519	12795
1874. Letter, dated February 28, 1935, from M. L. Freeman to G. W. Wattles proposing discussion prior to calling E. F. Wilson.	12519	12795
1875. Letter, dated February 28, 1935, without signature (from White, Weld & Co.) to M. L. Freeman stating compensation to be paid to him if White, Weld & Co. completes refunding operation for Wilson & Co., Inc.	12519	12795
1876-1. Letter, dated March 1, 1935, without signature (from White, Weld & Co.) to M. L. Freeman enclosing a signed letter.	12519	12796
1876-2. Letter dated March 27, 1935, from M. L. Freeman to Gurdon W. Wattles, White, Weld & Co., requesting a new agreement.	12519	12796
1877. Diary entries, dated September 11, 1934, to May 12, 1937, by John W. Cutler and others, Edward B. Smith & Co., regarding Wilson & Co. financing.	12520	12796

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1878. Letter, dated March 15, 1935, initialed J. R. S. (Joseph R. Swan, Edward B. Smith & Co.) to Thomas E. Wilson, chairman of the board, Wilson & Co., Inc., regarding conversations with E. A. Potter, Jr., relating to possible financing of Wilson & Co., Inc., and readiness of Edward B. Smith & Co. to submit definite proposal	12521	12799
1879. Memorandum, dated March 8, 1935, initialed J. W. C. (John W. Cutler) to C. L. Austin, Edward B. Smith & Co., referring to denial by Wilson & Co. of M. L. Freeman's authority to speak for it and mentioning suggestion by E. A. Potter, Jr., that Edward B. Smith & Co. inform Wilson & Co. of willingness to negotiate on bond issue	12521	12799
1880. Copy of letter dated May 18, 1935, initialed D. R. L. (from D. R. Linsley, vice president, The First Boston Corporation) to J. H. Briggs, H. M. Byllesby & Company, regarding The First Boston Corp.'s unwillingness to enter into highly competitive negotiations for Wilson & Co. financing and suggestion to Edward B. Smith & Co. to include H. M. Byllesby & Co. in the Wilson syndicate	12526	12799
1881. Memorandum, dated May 16, 1935, by H. M. Addinsell, The First Boston Corporation, regarding J. R. Swan's invitation to The First Boston Corporation to join in refinancing of Wilson & Co. and suggestion by Addinsell that H. M. Byllesby & Co. also be included	12526	12800
1882-1. Copy of telegram dated March 15, 1935, from D. R. Linsley, The First Boston Corporation, to Miles Warner, H. M. Byllesby & Company, stating condition under which The First Boston Corporation would be willing to discuss financing with Wilson & Co., Inc.	12527	12526
1882-2. Memorandum, dated September 9, 1935, by J. J. B. (J. J. Buckley, Edward B. Smith & Co.) discussing conferences on the inclusion of investment banking firms in The Wilson & Co. bond syndicate	12527	12801
1883. Letter, dated May 23, 1935, by James D. Cooney, vice president, Wilson & Co., Inc., to Mr. Wilson regarding details of forthcoming issue and selection of one or two underwriters as leaders	12528	12802
1884. Pencil memorandum (apparently draft of cablegram) in response to J. D. Cooney's letter, suggesting leading underwriters	12528	12803
1885. Memorandum, dated June 27, 1935, by D. R. Linsley, The First Boston Corporation, listing the underwriters and their percentage participations in financing of Wilson & Co., Inc., along with names of companies to head business	12532	12803
1885. Letter, dated July 8, 1935, from Faris R. Russell, White, Weld & Co., to John W. Cutler, Edward B. Smith & Co., containing chronological history of discussions regarding position of White, Weld & Co. in Wilson & Co. issue of July 1935 and their failure to be included. (Original of "Exhibit No. 1867.") Memorandum, initialed M. D. to John W. Cutler, stating that letter was discussed personally with Russell and reply by Cutler is thought unnecessary	12534	12804

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1887-1. "Schedule of operations followed by Smith, Barney & Co. when acting in capacity of head manager in wholesaling a new issue," dated August 1, 1939-----	12535	12806
1887-2. "Buying Department Work Sheet form," dated March 9, 1937, used by Edward B. Smith & Co. when manager or comanager-----	12535	12811
1887-3. Memorandum, for Industrial Division of Buying Department entitled "Industrial Investigations, Outline for use as guide in conducting investigations of Industrial Companies"-----	12535	12819
1887-4. Memorandum, dated January 1, 1937, entitled "Buying Department Work Sheet form for use in connection with issues headed by other houses in which we have a position as an underwriter"-----	12535	12829
1888. Specimen of dealer performance record card used by Smith, Barney & Co-----	12535	12831
1889-1. Letter, dated September 1, 1939, from W. H. Coulson, Smith, Barney & Co., to the Securities & Exchange Commission describing methods used by underwriters in financing the purchase of securities from issuing corporations-----	12543	12832
1889-2. Schedules showing day loan and collateral loan for The Pure Oil Company 5% cumulative preferred stock underwritten by Edward B. Smith & Co., and activity of loan and collateral-----	12543	12833
1889-3. Schedules showing day loan and collateral loan for Bethlehem Steel Corporation 15-year sinking fund convertible 3½% debentures underwritten by Edward B. Smith & Co., and activity of loan and collateral-----	12543	12834
1889-4. Schedule showing day loan for Shell Union Oil Corporation 15-year 2½% debentures underwritten by Smith, Barney & Co-----	12543	12836
1889-5. Schedule showing day loan for Pennsylvania Power & Light Company first mortgage 3½% bonds and 4½% debentures underwritten by Smith, Barney & Co-----	12543	12836
1890. Trust receipt form used by the Continental Illinois National Bank & Trust Company of Chicago. Trust receipt form used by the City National Bank & Trust Company of Chicago. Day loan agreement form used by The National City Bank of New York. Day loan agreement form used by the Chase National Bank of the City of New York. Day loan agreement form used by the Manufacturers Trust Co. of New York-----	12544	12837
1891. Loan agreement form used by the National City Bank of New York-----	12544	12840
1892. General loan and collateral agreement form used by the Bank of the Manhattan Company, New York. General loan and collateral agreement form used by the Chase National Bank of the City of New York. General loan and collateral agreement form used by the Guaranty Trust Company of New York-----	12544	12842
1893. Day loan agreement form used by the Guaranty Trust Company of New York-----	12544	12849
1894. Letter, dated August 29, 1939, from Kidder, Peabody & Co. to the Securities & Exchange Commission submitting information regarding financing of their participation in Panhandle Eastern Pipe Line Co. 4s, due 1952, Commercial Credit Co. 2½s due 1942 and Pure Oil Company 5% cumulative convertible preferred stock-----	12544	12850

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1895. Copy of letter dated September 1, 1939, from Peter R. Nehemkis, Jr. to Nevil Ford, The First Boston Corporation, requesting information regarding method of financing participations in issues of securities. Letter, dated September 7, 1939, from H. M. Addinsell, The First Boston Corporation, to Peter R. Nehemkis, Jr., submitting memorandum. Memorandum, dated September 6, 1939, by E. J. Costello, assistant treasurer to H. M. Addinsell, Chairman of executive committee, The First Boston Corporation, describing method of financing participations in issues of securities.	12544	12852
1896. Letter, dated September 11, 1939, by Halsey, Stuart & Co., Inc., to the Securities & Exchange Commission describing method of financing participations in issues of securities.	12544	12854
1897. Abstract of provision granting preferential rights to future financing, from contract dated April 28, 1939, between Airplane Manufacturing & Supply Corp. and G. Brashears & Co. ¹	12547	12854
1898. Abstract of provision granting preferential rights to future financing, from contract dated November 7, 1924, between South Carolina Electric & Gas Co. and Halsey, Stuart & Co., Inc. ¹	12547	12854
1899. Abstract of provision granting preferential rights to future financing, from contract dated October 10, 1919, between Metropolitan Edison Co. and Halsey, Stuart & Co., Inc. ¹	12547	12855
1900. Abstract of provision granting preferential rights to future financing, from contract dated December 14, 1927, between Lexington Water Power Co. and Halsey, Stuart & Co., Inc. ¹	12547	12855
1901. Abstract of provision granting preferential rights to future financing, from contract dated August 29, 1917, between Binghamton Light, Heat & Power Co. and Halsey, Stuart & Co., Inc. ¹	12547	12855
1902. Abstract of provision granting preferential rights to future financing, from contract dated September 30, 1919, between General Gas & Electric Co. re New Jersey Power & Light Co. Securities and Halsey, Stuart & Co. ¹	12547	12855
1903. Abstract of provision granting preferential rights to future financing, from contract dated February 17, 1937, between Brown, McLaren Manufacturing Co. and the six directors and Alison & Co. ¹	12547	12856
1904. Abstract of provision granting preferential rights to future financing, from contract dated February 20, 1937, between Bender Body Co. and Wm. J. Mericka & Co. ¹	12547	12856
1905. Abstract of provision granting preferential rights to future financing, from contract dated July 7, 1937, between Cinecolor (Inc.) and G. Brashears & Co. ¹	12547	12856
1906. Abstract of provision granting preferential rights to future financing, from contract dated September 13, 1937, between Mode O'Day Corp. and three officers and directors and Banks Huntley & Co. ¹	12547	12856
1907. Abstract of provision granting preferential rights to future financing, from contract dated September 15, 1922, between Land & Sea Investment Co. re Wisconsin Public Service Corp. securities and Halsey, Stuart & Co. ¹	12547	12856

¹ The full text of the contract is on file with the committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1908. Abstract of provision granting preferential rights to future financing, from contract dated July 14, 1938, between eight stockholders of Dixie Home Stores and J. G. White & Co. and nine others ¹ -----	12547	12857
1909. Abstract of provision granting preferential rights to future financing, from contract dated July 10, 1936, between Bell Aircraft Corp. and G. M. P. Murphy & Co. and four others. ¹ -----	12547	12857
1910. Abstract of provision granting preferential rights to future financing, from contract dated May 5, 1939, between Rands and the stockholders and Floyd D. Cerf Co. ¹ -----	12547	12857
1911. Abstract of provision granting preferential rights to future financing, from contract dated January 17, 1939, between Norwich Pharmacal Co. and two stockholders and F. Eberstadt & Co. ¹ -----	12547	12857
1912. Abstract of provision granting preferential rights to future financing, from contract dated April 6, 1937, between Houston Oil Field Material Co. and Robinson Miller & Co. ¹ -----	12547	12857
1913. Abstract of provision granting preferential rights to future financing, from contract dated September 28, 1937, between L. E. Carpenter & Co. and Whittaker Bros. & Co., Inc. (New York) ¹ -----	12547	12858
1914. Abstract of provision granting preferential rights to future financing, from contract dated July 9, 1937, between Reed Drug Company and Floyd D. Cerf Co. ¹ -----	12547	12858
1915. Abstract of provision granting preferential rights to future financing, from contract dated April 12, 1938, between General Plastics Inc. and Fuller Cruttenden & Co. ¹ -----	12547	12858
1916. Abstract of provision granting preferential rights to future financing, from contract dated October 26, 1939, between Continental Motors Corp. and Van Alstyne, Noel & Co. ¹ -----	12547	12858
1917. Abstract of provision granting preferential rights to future financing, from contract dated August 23, 1939, between Butler's Inc. and R. S. Dickson & Co. ¹ -----	12547	12858
1918. Abstract of provision granting preferential rights to future financing, from contract dated August 4, 1939, between Finch Telecommunications, Inc., and Distributors Group Incorporated ¹ -----	12547	12858
1919. Abstract of provision granting preferential rights to future financing, from contract dated March 25, 1939, between Hayes Body Corp. and A. W. Porter, Inc. ¹ -----	12547	12859
1920. Abstract of provision granting preferential rights to future financing, from contract dated February 4, 1937, between Burd Piston Ring Co. and certain stockholders and Van Alstyne, Noel & Co. ¹ -----	12547	12859
1921. Abstract of provision granting preferential rights to future financing, from contract dated January 19, 1937, between Brewster Aeronautical Corp. and a stockholder and Van Alstyne, Noel & Co. ¹ -----	12547	12859
1922. Abstract of provision granting preferential rights to future financing, from contract dated May 15, 1922, between Commonwealth Power Railway & Light Co., Commonwealth Power Corp. and Federal Securities Corp. ¹ -----	12547	12859

¹ The full text of the contract is on file with the committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1923. Abstract of provision granting preferential rights to future financing, from contract dated September 24, 1921, between Central Illinois Light Co. and Federal Securities Corp. ¹ -----	12547	12859
1924. Abstract of provision granting preferential rights to future financing, from contract dated March 1, 1923, between Illinois Electric Power Co. and Federal Securities Corp. ¹ -----	12547	12860
1925. Abstract of provision granting preferential rights to future financing, from contract dated November 29, 1921, between Illinois Power Co. and Federal Securities Corp. ¹ -----	12547	12860
1926. Agreement, dated June 19, 1925, between Ladenburg, Thalmann & Co., H. M. Byllesby & Company, and Standard Gas & Electric Company granting H. M. Byllesby & Co. an interest in Pittsburgh Utilities Corporation. (Holding company of Philadelphia Company Utilities system.)-----	12552	12860
1927. Memorandum of agreement between H. M. Byllesby & Company and Standard Gas & Electric Company dated June 19, 1925, granting Standard Gas & Electric Company an interest in Pittsburgh Utilities Corporation-----	12552	12865
1928. Agreement, dated March 22, 1926, between Ladenburg, Thalmann & Co., H. M. Byllesby & Company and Standard Gas & Electric Company altering interests of Ladenburg, Thalmann & Co. and associates in Pittsburgh Utilities Corporation and related companies, and including provisions regarding future financing, management and engineering fees, and counsel of the companies.-----	12553	(2)
1929. Table: Securities sold to the public by Standard Power & Light Corp. and its subsidiaries, March 22, 1926–December 31, 1929, and percentages of participations therein-----	12555	12867
1930. Table: Names of issues, and participants therein, of securities sold to public from January 1, 1924, to December 31, 1929, by Standard Gas & Electric Company or any of the corporations in its system-----	12555	(3)
1931. Memorandum, dated December 21, 1929, entitled "Banking," signed by J. H. Briggs, H. M. Byllesby & Co., Victor Emanuel, United States Electric Power Corporation, and Walter Rosen, Ladenburg, Thalmann & Co., allocating participations, leadership, and management in future financing of Standard Gas & Electric, Standard Power & Light, and Philadelphia Company systems-----	12561	12868
1932. Memorandum, dated May 15, 1928, by Victor Emanuel, United States Electric Power Corporation, regarding agreement covered in conversation between Alfred Lowenstein and Victor Emanuel relative to Standard Gas & Electric Co., American Water Works & Electric Company, Inc., and Middle West Utilities Company-----	12564	12563
1933. Memorandum, dated May 16, 1929, by Carlton P. Fuller, Schroder, Rockefeller & Company, Inc., regarding status of Standard Gas & Electric Company for London interests-----	12569	12870

¹ The full text of the contract is on file with the committee.

² On file with the Securities & Exchange Commission, Docket 31-420, vol. 2, Exhibit No. 21.

³ On file with the committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1934. Cable, dated October 15, 1928, from Frank Tiarks, to Schroedpriv, (J. Henry Schroder & Co., London) with regard to acquiring control of Standard Gas & Electric Company-----	12571	12871
1935. Copy of Cable dated October 19, 1929, from C. L. Fisher, vice president, Hydro-Electric Securities Corp. to Loewenstol, Brussels, (Hydro-Electric Securities Corp., Brussels office), regarding agreement as to terms in gaining control of Standard Gas & Electric Company-----	12574	12872
1936. Copy of cable dated September 12, 1929, from Schroder, Rockefeller & Co., Inc. to Schroedpriv (J. Henry Schroder & Co., London) regarding invitation to Baron Schroder to accept directorship in United States Power Corporation-----	12575	12872
1937. Cable from Baron Schroder, J. Henry Schroder & Co., to J. Henry Schroder Banking Corporation for C. L. Fisher, Hydro-Electric Securities Corp., accepting position on the board of directors-----	12575	12873
1938. Cable, dated September 13, 1929, from J. Henry Schroder Banking Corp. to Baron Schroder, J. Henry Schroder & Co., London, regarding position in United States Electric Power Corporation business-----	12575	12873
1939. Cable, dated September 13, 1929, from Schroedpriv (J. Henry Schroder & Co., London) to Schrobanco (J. Henry Schroder Banking Corporation, New York) giving reason for accepting directorship of United States Electric Power Corporation-----	12575	12873
1940-1. Table: Securities sold to the public by Standard Gas & Electric Company or any of the corporations in its system, January 7, 1930, to June 1, 1936, and percentages of participations therein-----	12576	Facing 12874
1940-2. Supplementary Exhibit A to Table: Securities sold to the public by Standard Gas & Electric Company or any of the corporations in its system, January 7, 1930, to June 1, 1936, and percentages of participations therein-----	12576	12874
1940-3. Supplementary Exhibit B to Table: Securities sold to the public by Standard Gas & Electric Company or any of the corporations in its system January 7, 1930, to June 1, 1936, and percentages of participations therein-----	12576	12874
1940-4. Supplementary Exhibit C to Table: Securities sold to the public by Standard Gas & Electric Company or any of the corporations in its system January 7, 1930, to June 1, 1936, and percentages of participations therein-----	12576	12875
1941. Table: Names of issues, and participants therein, of securities sold to the public from January 1, 1930, to April 22, 1938, by Standard Gas & Electric Company or any of the corporations in its system-----	12576	(1)
1942. Letter, dated June 11, 1938, from W. G. Pohl, H. M. Byllesby & Co., to C. Roy Smith, Securities and Exchange Commission, giving names of syndicate managers in Standard Gas & Electric Company, January 1, 1924, to April 22, 1938-----	12576	(1)

¹ On file with the Committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1943. Memorandum, dated August 10, 1934, by Carlton P. Fuller, Schroder, Rockefeller & Co., Inc., regarding general evaluation of future prospects of Standard Gas & Electric Company-----	12578	12875
1944. Cable, dated September 13, 1934, from Mr. Vanderstraten, Hydro-Electric Securities Corp., to Alemanuel (Albert Emanuel Co.) regarding Chase National Bank negotiating with group for Harrison Williams concerning pledged Usepco securities-----	12579	12876
1945. Cable, dated September 16, 1934, from Alemanuel (Albert Emanuel Co.) to Mr. Vanderstraten, Hydro-Electric Securities Corp., regarding arrangement with H. M. Bylesby & Company giving Hydro-Electric Securities Corp. option on Usepco securities-----	12580	12876
1946. Cable, dated September 21, 1934, from Schrobanco (J. Henry Schroder Banking Corporation, New York) to Schrodpriv (J. Henry Schroder & Co., London) for Major Pam regarding further financial interest by Hydro-Electric Securities Corp. in United States Electric Power Company-----	12583	12877
1947. "Extract from Mr. Mocarski's letter of December 17, 1934" regarding Hydro-Electric's bid for Usepco indebtedness-----	12583	12878
1948. Cable, dated November 6, 1934 (from J. Henry Schroder Banking Corporation, New York), to Schrodpriv (J. Henry Schroder & Co., London) for Major Pam regarding necessary readjustments among operating companies to make Standard Power or Standard Gas equity attractive-----	12583	12878
1949. Memorandum, dated December 18, 1935, by Robin Wilson, J. Henry Schroder & Co., London, regarding possible sale of \$3,000,000 claim against Usepco by Chase Bank, Chemical Bank and Guaranty Trust-----	12585	12879
1950. Cable, dated December 19, 1935, from Robin Wilson, J. Henry Schroder & Co., London, to Neil Adshead, J. Henry Schroder & Co., London, regarding Victor Emanuel, Hydro Electric and Leadenhall Securities Co. acquiring Usepco's holdings in Standard Power & Light shares and 75 percent of Standard Gas System financing-----	12585	12879
1951. Cable, dated December 19, 1935, from Neil R. Adshead, J. Henry Schroder & Co., London, to C. F. Beal, J. Henry Schroder Banking Corporation, New York, with regard to delaying until more definite plan for Usepco available-----	12586	12880
1952-1. Cable, dated December 20, 1935, from J. Henry Schroder & Co., London, to (J. F. Beal) J. Henry Schroder Banking Corporation, New York, regarding possible value of 75% financing of Standard Gas System-----	12586	12880
1952-2. Memorandum, entitled "Standard Gas & Electric Co.—Information obtained by Robin Wilson from Victor Emanuel"-----	12586	12880
1953. Letter, dated December 26, 1935, from Carlton P. Fuller, Schroder Rockefeller & Co., Inc., to John L. Simpson, J. Henry Schroder Banking Corporation, New York, regarding plan to pay banks \$1,500,000 for their claim against Usepco-----	12588	12882
1954-1. Letter, dated January 10, 1936, from Carlton P. Fuller to John L. Simpson reviewing situation with respect to Schroder interests and future prospects-----	12591	12884

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1954-2. Cable, dated January 8, 1936, from Emanuel to Schroder, London, for Major Pam and Robin Wilson regarding respective participations in future financing of London and American interests-----	12591	12886
1955. Cable, dated January 14, 1936, from Carlton P. Fuller to Schrodpriv (J. Henry Schroder & Co., London), regarding active competition for Usepco securities by Harrison Williams and stating that American group must be prepared to put in cash and/or reciprocity in order to retain position in Standard financing-----	12594	12887
1956. Cable, dated January 15, 1936, from Schrodpriv, J. Henry Schroder & Co., London, to Schrobanco, J. Henry Schroder Banking Corporation, New York, regarding Hydro Schroder group agreeing to take participation in purchase group of Usepso loan-----	12595	12887
1957. Cable, dated February 14, 1936, from Schrodpriv, J. Henry Schroder & Co., London, to Schrobanco, J. Henry Schroder Banking Corporation, New York, requesting information regarding advisability of Hydro and other clients participating in Usepco loan-----	12596	12887
1958. Letter, dated February 17, 1936, from Victor Emanuel, Emanuel & Co., to C. P. Fuller, J. Henry Schroder Banking Corporation, offering suggestions for reply to J. Henry Schroder & Co.'s cable of February 14, 1936-----	12597	12888
1959. Cable, dated February 18, 1936, from C. P. Fuller, Schroder Rockefeller & Co., to Schrodpriv (J. Henry Schroder & Co., London) regarding attractiveness of Usepco loan acquisition and future underwriting of Standard Gas System securities-----	12597	12889
1960. Cable, dated February 20, 1936, from Schrodpriv (J. Henry Schroder & Co., London) to C. F. Beal, J. Henry Schroder Banking Corporation (New York) regarding J. Henry Schroder & Co., or Leadenhall Securities Co. sharing directly in American underwriting-----	12597	12890
1961-1. Cable, dated February 24, 1936, from C. P. Fuller, Schroder Rockefeller & Co., Inc., to Schrodpriv (J. Henry Schroder & Co., London) regarding disqualification of Leadenhall Securities Co. or new company and suggesting Conti-Trust as appropriate participant for American underwritings-----	12597	12890
1961-2. Letter, dated March 27, 1936, from Robin Wilson, London, to Victor Emanuel, New York, regarding Usepco deal having "gone completely to sleep for the moment"-----	12597	12891
1962. Cable, dated May 22, 1936, from Schrodpriv (J. Henry Schroder & Co., London) to Robin Wilson, J. Henry Schroder & Co., London, regarding promise to Hydro-Electric Securities Corp. of participation in financing profits and other details on American underwriting-----	12600	12892
1963. Cable, dated May 25, 1936, from Robin Wilson, J. Henry Schroder & Co., London, to Schrodpriv (J. Henry Schroder & Co., London) regarding possible returns on investment of Hydro-Electric Securities Corp.; difficulties of foreign underwriters enforcing reciprocity and advising underwriting risk still exists although limited to few hours-----	12600	12892

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1964. Letter, dated August 24, 1936, from J. Henry Schroder & Co. to Schroder Rockefeller & Co., Inc., regarding the taking over from J. Henry Schroder Banking Corporation by Schroder Rockefeller & Co., Inc., of its interest in United States Electric Power Corporation and Schroder Rockefeller & Co. to become agent for London interests in financing of Standard Gas System-----	12600	12893
1965. Memorandum, dated May 28, 1936, by E. G. Diefenbach, Bancamerica-Blair Corporation, regarding acquisition of notes of United States Electric Power Corporation and agreement between latter and H. M. Byllesby & Co. for 75% of the financing of the Standard Gas & Electric System-----	12606	12894
1966. Cable, dated January 6, 1936, from Schrodpriv (J. Henry Schroder & Co., London) to Schrobanco (J. Henry Schroder Banking Corporation, New York) requesting legal advice on Usepco program and whether contract assuring 75% future group financing to Emanuel and Hydro is binding-----	12611	12895
1967-1. Cable, from Victor Emanuel, Emanuel & Co. to Robin Wilson, J. Henry Schroder & Co., London, regarding difficulties with respect to Sullivan and Cromwell-----	12611	12895
1967-2. Cable, dated January 7, 1936, to Major Pam, Hotel Meurice, Paris, from Carolton P. Fuller, J. Henry Schroder Banking Corporation, New York, regarding Sullivan & Cromwell's comments with reference to cable of January 6, 1936-----	12611	12896
1968. Memorandum, dated March 10, 1936, by Carolton P. Fuller, J. Henry Schroder Banking Corp., New York, to Messrs. Beal and Simpson, J. Henry Schroder Banking Corp., New York, regarding comments of Mr. R. Crispell, Sullivan & Cromwell, on Byllesby-Usepco agreement-----	12616	12896
1969. Memorandum, dated March 13, 1936, by Carlton P. Fuller regarding the three agreements entered into between H. M. Byllesby & Co. and Usepco-----	12622	12897
1970. Copy of letter dated March 13, 1936, from J. L. Simpson, J. Henry Schroder Banking Corporation, to Frank Common, Messrs. Brown, Montgomery & McMichael, confirming view that financial agreement between Byllesby and Usepco is not legally binding-----	12623	12899
1971. Memorandum, dated May 18, 1928, regarding Standard Gas & Electric Company, American Water Works & Electric Company, Inc., and Middle West Utilities Company covering statistical information, earnings and dividends per shares, financial and statistical information along with explanation of certain items-----	12623	12899
1972. Letter, dated January 4, 1940, from S. W. Duhig, vice president, Shell Union Oil Corporation, to Peter R. Nehemkis, Jr., Special Counsel, with stipulation covering communications or memoranda sent or received by Shell Union Oil Corporation-----	12628	12903
1973. Letter, dated June 7, 1935, from J. C. Van Eck, director, Shell Union Oil Corporation, to F. Godber, director, Shell Union Oil Corporation with regard to prospective financing by Hayden, Stone, Lee Higginson group approach by a banking syndicate consisting of Lehman Brothers and others-----	12628	12904
1974. Memorandum showing public offerings of Shell Union Securities with principal underwriters prior to 1935---	12629	12905

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1975. Letter, dated July 22, 1935, from S. Belither, director, Shell Union Oil Corporation, to J. C. Van Eck, director, Shell Union Oil Corporation, regarding discussions with Dillon, Read & Co. relative to refinancing-----	12629	12905
1976. Cable, dated August 14, 1935, from Condeteck (Shell Union Oil Corporation, New York) to Sir Henri Deterding, director, Royal Dutch Company, regarding offer of Dillon, Read & Co. to underwrite \$50,000,000 4% debentures of Shell Union Oil Corporation-----	12629	12905
1977. Cable, dated October 14, 1935, from Sir Henri Deterding to J. C. Van Eck, director, Shell Union Oil Corporation, regarding introduction of Pierre David Weill, Lazard Frères & Co., Paris, in view of possible future financing of Shell Union Oil Corporation, and to introduce Stanley Russell-----	12629	12906
1978. Cable, dated July 29, 1935, from Sir Henri Deterding to Condeteck (Shell Union Oil Corporation) attention J. C. Van Eck, et al, suggesting Dillon, Read & Co. first make their offer in Shell Union Oil Company refinancing with suggestion that Lehman Brothers be considered next-----	12629	12906
1979. Cable, dated November 1, 1935, from Condeteck (Shell Union Oil Corporation, New York) to Sir Henri Deterding regarding terms of Dillon, Read & Co.'s offer in Shell Union Oil Corporation refinancing with suggestion that "other banker friends" be given opportunity to submit terms-----	12630	12906
1980. Letter, dated December 16, 1935, from Dillon, Read & Co. to Shell Union Oil Corporation regarding \$50,-000,000, 3½% fifteen year debentures-----	12631	12907
1981. Letter, dated December 18, 1935, from Lee Higginson Corporation and Hayden, Stone & Company to Shell Union Oil Corporation regarding their interest in Shell Union refinancing as soon as market conditions reach the point where issue can successfully be made-----	12631	12908
1982. Cable, dated January 14, 1936, from Sir Henri Deterding, Royal Dutch Company, to Shell Union Oil Corporation regarding refinancing proposal and Pierre David Weill's phone call. Recommends careful consideration of any proposal more attractive than that of Dillon, Read & Co.'s-----	12631	12908
1983. Cable, dated January 13, 1936, unsigned (from Shell Union Oil Corporation) to Condeteck, London, regarding Clarence Dillon's verbal offer and relative to obtaining in writing an offer regarding \$50,000,000 refinancing from all interested parties-----	12632	12908
1984. Cable, dated January 22, 1936, from Shell Union Oil Corporation to Sir Henri Deterding remarking about undesirable complications of competitive bidding and reporting that Dillon, Read & Co. and Hayden, Stone & Co. are to be joint syndicate managers-----	12632	12909
1985. Table: List of participants showing the dollar amount of participations of the Shell Union Oil Corporation group dated February 10, 1936-----	12634	12910
1986. Telegram, dated March 6, 1936, from R. van der Woude, president, Shell Union Oil Corporation, to F. Godber, director, Shell Union Oil Corporation, regarding Dillon's desire to express views to Mr. Godber relative to Shell Union Oil Corporation issue-----	12634	12910

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1987. Telegram, dated March 6, 1936, from F. Godber to R. van der Woude relative to maintaining view already expressed to Dillon-----	12635	12911
1988. Letter, dated November 3, 1939, from Wilbur C. DuBois, Dillon, Read & Co., to O. L. Altman, Securities & Exchange Commission, enclosing photostatic copies of accounts connected with \$60,000,000 Shell Union Oil Corporation 15-year, 3½% debentures, and copy of underwriting agreement dated March 7, 1936 between Dillon, Read & Co., Hayden, Stone & Co. and Shell Union Oil Corporation for \$60,000,000 15-year, 3½% debentures, due March 1, 1951-----	12635	12911
1989. Telegram, dated March 11, 1936, from J. W. Watson, Shell Petroleum Corp., to S. W. Duhig, treasurer, Shell Union Oil Corporation, regarding fact that \$60,000,000 15-year, 3½% debentures moving slowly-----	12636	12914
1990. Telegram, dated March 11, 1936, from J. C. Van Eck, director, Shell Union Oil Corporation, to F. Godber, director, Shell Union Oil Corporation, regarding necessary time before \$60,000,000 15-year, 3½% debentures are absorbed as result of slow sale of issue-----	12636	12636
1991-1. Letter, dated January 9, 1940, from H. H. Egly, Dillon, Read & Co., to Peter R. Nehemkis, Jr., confirming memorandum submitted regarding distribution of Shell Union 3½% debentures in 1936 and explaining why no management fee was charged-----	12636	12915
1991-2. Memorandum, prepared by Investment Banking Section of Securities and Exchange Commission dated November 17, 1939, headed "Distribution of Shell Union 3½% debentures in 1936" showing underwriting group and amount of participation of each-----	12636	12915
1992. Letter, dated April 3, 1936, from J. C. Van Eck, director, Shell Union Oil Corporation, to G. Legh-Jones, director, Shell Union Oil Corporation, London, regarding report of Mr. Clarence Dillon, Dillon, Read & Co., relative to Shell Union issue, and telling amount of bonds still in hands of several underwriters-----	12637	12918
1993. Cable, dated January 20, 1937, from R. G. Van der Woude, president, Shell Union Oil Corporation to Vanwood, London, regarding Tide Water Associated financing-----	12637	12919
1994. Letter, dated February 4, 1937, from R. G. A. Van der Woude to J. C. Van Eck regarding financial standing of Shell Union Oil Corporation and possibility of refunding outstanding preferred stock and raising additional capital-----	12637	12919
1995. Cable, dated March 5, 1937, to Vanwood from R. G. Van der Woude relative to it being best not to disturb grouping of bankers as was formed in 1936 financing. Mentions fact that Dillon Read, Hayden Stone, and Lee Higginson have come to understanding among themselves-----	12639	12922
1996. Memorandum, dated March 16, 1937, by S. W. Duhig, treasurer, Shell Union Oil Corporation, regarding proposal underwriting group were prepared to make in refinancing Shell Union preferred stock and the proportion each banker would share in the underwriting-----	12639	12923

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
1997. Cable, dated March 16, 1937, from R. G. Van der Woude, president, Shell Union Oil Corporation, to Vanwood, regarding unsatisfactory offer of Dillon, Read & Co. in proposed new financing of Shell Union Oil Corporation.....	12640	12924
1998. Cable, dated March 17, 1937, from R. G. Van der Woude to Vanwood, regarding 10-day limit set for Dillon, Read & Co. to revise the offer in Shell Union financing at end of which period company considers itself "entirely free to approach others.".....	12640	12924
1999. Letter, dated January 18, 1938, from J. C. Van Eck, director, Shell Union Oil Corporation, to R. G. Van der Woude regarding a possible new banking connection with Morgan Stanley & Co., Incorporated and latter's ideas about restrictions on proposed financing.....	12640	12925
2000-1. Letter dated January 8, 1940, from C. B. Stuart, Halsey, Stuart & Co., Inc., to Peter R. Nehemkis, Jr., enclosing stipulation identifying letter initialed C. B. S. dated May 11, 1938.....	12641	12925
2000-2. Letter, dated May 11, 1938, from C. B. S. (Charles B. Stuart), Halsey, Stuart & Co., Inc., to H. L. Stuart, Halsey, Stuart & Co., Inc., relative to Morgan Stanley & Co., Incorporated working on Shell Union Oil Corporation financing.....	12641	12926
2001. Letter, dated April 13, 1938, from R. G. Van der Woude, president, Shell Union Oil Corporation, to J. C. Van Eck, director, Shell Union Oil Corporation, regarding preliminary discussions with Morgan Stanley & Co. Incorporated for new financing of Shell Union.....	12643	12926
2002. Memorandum dated April 22, 1938, by S. W. Duhig, treasurer, Shell Union Oil Corporation, regarding discussions with M. C. Laffey of Equitable Life Assurance Society of U. S. A. regarding proposed \$25,000,000 loan.....	12644	12927
2003. Cable, dated April 30, 1938, from R. G. Van der Woude to Vanwood regarding various financing opportunities and opinion insurance companies most preferable to Shell Union.....	12644	12927
2004. Letter, dated June 1, 1938, from R. G. Van der Woude to A. Fraser, Shell Petroleum Corp. requesting comprehensive preliminary report so Equitable Life Assurance Society of U. S. A. will be justified in closing deal prior to receiving final report.....	12646	12929
2005. Letter, dated May 23, 1939, from S. W. Duhig, treasurer, to R. G. Van der Woude, president, Shell Union Oil Corporation, regarding attempt to negotiate an adjustment in the interest rate on \$25,000,000 loan with Equitable Life.....	12646	12929
2006. Letter, dated May 24, 1939, from S. W. Duhig to R. G. Van der Woude giving summary of talk with William Ewing and Perry E. Hall, Morgan Stanley & Co. Incorporated, regarding Shell Union financing.....	12647	12930
2007. Cable, dated June 6, 1939, from R. G. Van der Woude to Vanwood, regarding Equitable Life's willingness to reduce interest rate in exchange for bonus and suggestion that company proceed to finance through Morgan Stanley.....	12647	12931
2008. Cable, dated June 26, 1939, from R. G. Van der Woude to Vanwood regarding tentative agreement with Morgan Stanley & Co. Incorporated for the public		

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Intro- duced at page	Appears on page
2009. offering of \$85,000,000, 15-year, 2½% debentures at 98½, as result of Equitable's refusal to make changes in existing agreements -----	12647	12931
2010. Cable, dated July 13, 1939, by R. G. van der Woude to Vanwood regarding discussion with Morgan Stanley & Co. Incorporated. Due to market changes a successful issue was impossible at an offering price better than 97½ -----	12649	12932
2011. Telegram, dated July 17, 1939, from R. G. van der Woude to S. Belither, director, Shell Union Oil Corporation, regarding the signing of underwriting agreement with Morgan Stanley & Co. Incorporated at 97½ -----	12650	12933
2012. Purchase contract between Shell Union Oil Corporation and Morgan Stanley & Co., Incorporated, covering the \$85,000,000 Shell Union Oil Corporation 15-year, 2½% debentures dated July 1, 1939, due July 1, 1954 showing list of participants and amount each received in underwriting. Selling group letter from Morgan Stanley & Co., Incorporated, covering dealer participations in the above described issue -----	12650	12933
2013-1. Cable, dated July 20, 1939, from R. G. van der Woude, president, Shell Union Oil Corporation to Vanwood, regarding slow response of Shell Union Oil Corporation \$85,000,000, 15-year, 2½% debentures -----	12650	12650
2013-2. Stipulation by Arthur Dean, Sullivan & Cromwell, counsel to The First Boston Corporation, identifying memorandum dated March 10, 1937 by H. M. Addin- sell, The First Boston Corporation -----	12651	12942
2014. Memorandum, dated March 10, 1937, by H. M. Addin- sell, The First Boston Corporation, regarding tele- phone conversation with Dean Mathey of Dillon, Read & Co. concerning Shell Union's proposed preferred stock issue. Mentions "well-known trading proclivities of the Shell people." -----	12651	12942
2015. Letter, dated November 20, 1939, from Perry E. Hall, Morgan Stanley & Co., Incorporated, to P. R. Nehemkis, Jr., enclosing a memorandum relating to Shell Union Oil Corporation 3½% debentures -----	2660	12943
2016. Underwriting agreements between Morgan Stanley & Co. Incorporated and Shell Union Oil Corporation regarding the \$85,000,000 Shell Union Oil Corporation 15-year 2½% debentures dated July 1, 1939, due July 1, 1954, listing group of eighty-five underwriters and amount of participation of each -----	12660	12944
2017. Extract of underwriting agreement dated July 17, 1939 between Morgan Stanley & Co. Incorporated and Southern Bell Telephone & Telegraph Company for \$22,250,000 3% debentures due July 1, 1979, con- taining Morgan Stanley & Co.'s guarantee of per- formance by underwriters -----	12663	12956
2018. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Appalachian Electric Power Co. \$57,000,000 first mortgage 4% bonds, due 1963 and \$10,000,000 sinking fund debentures 4½% series, due 1948, dated January 28, 1938, Bonbright & Co. Inc. syndicate managers ¹ -----	12667	12957

¹ The full text of the contract is on file with the Committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Intro- duced at page	Appears on page
2018. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Bethlehem Steel Corporation, \$25,000,000 consolidated mortgage 20-year sinking fund 3¼% bonds, Series F, due 1959, dated June 26, 1939, Kuhn, Loeb & Co., Smith Barney & Co., Mellon Securities Corporation syndicate managers ¹ -----	12667	12957
2019. Provisions governing disposition of securities reserved dealers in selling group but not purchased by them, from underwriting contract for Central Illinois Public Service Company \$38,000,000 first mortgage bonds, Series A, 3¼%, due 1968, dated December 5, 1938; Halsey, Stuart & Co., Inc., syndicate managers ¹ -----	12667	12957
2020. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Central Maine Power Company, \$4,500,000 first and general mortgage bonds, Series J, 3½% due 1968, dated February 17, 1939; Coffin & Burr, Incorporated, syndicate managers ¹ -----	12667	12958
2021. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Consolidated Gas, Electric Light & Power Company of Baltimore, \$7,000,000, Series P, 3% first refunding mortgage sinking fund bonds due 1969, dated June 5, 1939; White, Weld & Co., syndicate managers ¹ -----	12667	12958
2022. Provisions governing disposition of securities reserved for dealers in selling groups but not purchased by them, from underwriting contract for Dallas Power & Light Company, \$16,000,000 first mortgage bonds, 3½%, due 1967, dated February 6, 1937; Lee, Higginson Corporation, syndicate managers ¹ -----	12667	12958
2023. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Firestone Tire & Rubber Company \$50,000,000 10-year 3½% debentures, due 1948, dated October 24, 1938 Brown, Harriman & Co., Incorporated and Otis & Co. (Incorporated) syndicate managers ¹ -----	12667	12959
2024. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Gatineau Power Company \$52,500,000 first mortgage 3¼% bonds, Series A, due 1969, dated April 21, 1939 The First Boston Corporation, syndicate managers ¹ -----	12667	12959
2025. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Indianapolis Power & Light Company \$32,000,000 first mortgage bonds, 3¼% series, due 1968 and \$5,500,000 serial notes, dated August 3, 1938 Lehman Brothers, syndicate managers ¹ -----	12667	12959
2026. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Michigan Consolidated Gas Company, \$34,000,000 first mortgage bonds, 4% series, due 1963, dated October 4, 1938; Dillon, Read & Co., Mellon Securities Corporation, syndicate managers ¹ -----	12667	12960

¹ The full text of the contract is on file with the Committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Introduced at page	Appears on page
2027. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Montana-Dakota Utilities Co. \$9,000,000 first mortgage sinking fund bonds, 4½% series, due 1954, dated May 20, 1939; Blyth & Co., Inc. and Merrill Lynch & Co., Inc., syndicate managers ¹ -----	12667	12960
2028. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for National Distillers Products Corporation \$22,500,000 10-year convertible 3½% debentures, due March 1, 1949, dated March 17, 1939; Glore, Forgan & Co., Harriman Ripley & Co., Inc., syndicate managers ¹ -----	12667	12960
2029. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for National Steel Corporation \$50,000,000 first (collateral) mortgage bonds, 3% series, due April 1, 1965, dated April 24, 1939; Kuhn, Loeb & Co. and Harriman Ripley & Co., Incorporated, syndicate managers ¹ -----	12667	12961
2030. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for New York State Electric & Gas Corporation \$13,000,000 first mortgage bonds, 3¾% series, due 1964, dated June 19, 1939; The First Boston Corporation and Glore, Forgan & Co., syndicate managers ¹ -----	12667	12961
2031. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for North Shore Gas Company and North Shore Coke & Chemical Company \$5,100,000 joint first mortgage 4% bonds, series A, due January 1, 1942; A. G. Becker & Co., syndicate manager ¹ -----	12667	12961
2032. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Pennsylvania Power & Light Company \$95,000,000 first mortgage bonds, 3½% series, due 1969, \$28,500,000, 4½% debentures due 1974, dated August 7, 1939; Smith Barney & Co., The First Boston Corporation, Bonbright & Company, Incorporated, and Dillon, Read & Co., syndicate managers ¹ -----	12667	12962
2033. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Public Service Company of Colorado \$40,000,000 first mortgage bonds, 3½% series, due 1964, dated November 25, 1939; Halsey, Stuart & Co., Inc., syndicate manager ¹ -----	12667	12962
2034. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Rochester Gas & Electric Corporation, \$8,323,000 general mortgage 3¾% bonds, Series J, due 1969, dated June 19, 1939; The First Boston Corporation, syndicate managers ¹ -----	12667	12963

¹ The full text of the contract is on file with the Committee.

SCHEDULE OF EXHIBITS—Continued

Number and summary of exhibits	Intro- duced at page	Appears on page
2035. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Shell Union Oil Corporation \$60,000,000 15-year 3½% debentures, due March 1, 1951, dated March 7, 1936; Dillon, Read & Co. and Hayden, Stone & Co., syndicate managers ¹ -----	12667	12963
2036. Provisions governing disposition of securities reserved for dealers in selling group but not purchased by them, from underwriting contract for Southern Indiana Gas & Electric Company 85,895 shares 4.8% preferred stock, dated October 23, 1936; Bonbright & Company, Incorporated, syndicate manager ¹ -----	12667	12963
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¹ The full text of the contract is on file with the Committee.

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INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

MONDAY, JANUARY 8, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment on Wednesday, December 20, 1939, in the Caucus Room, Senate Office Building; Senator William H. King presiding.

Present: Senator King (acting chairman); Representative Williams; Messrs. Lubin, O'Connell, Henderson, and Brackett.

Present also: Clifton M. Miller and Robert McConnell, Department of Commerce; Peter R. Nehemkis, Jr., special counsel, and Oscar L. Altman, associate financial economist, Securities and Exchange Commission.

Acting Chairman KING. The committee will be in order.

Mr. Henderson, have you anything on your mind?

Mr. HENDERSON. Yes; I have an introductory statement, Mr. Chairman.

STATEMENT BY MR. HENDERSON

Mr. HENDERSON. Prior to the committee's recess, the S. E. C.'s Investment Banking Section presented testimony on "frozen accounts" and the realignments in the investment banking industry resulting from the divorce of the bank security affiliates pursuant to the Banking Act of 1933. This committee may sometime have to make a judgment as to whether actual divorce took place, or whether merely separate establishments were set up. There was also presented in the former hearings evidence with respect to certain aspects of the concentration of economic power in this industry.

Today and throughout this week, the witnesses to appear before the committee will testify, among other things, as to the treaties, agreements, and understandings which exist among investment banking houses and between investment banking houses and the corporations whose securities are issued.

The committee will recall that, prior to our recess, evidence was offered with respect to a number of "understandings" existing between various underwriting firms. There was testimony on the "understanding" relating to former National City Co. business¹ and the Pacific Gas & Electric Co. financing;² Mr. Sidney Mitchell testified concerning his "understanding"—or as he characterized it,

¹ Supra, Part 22, pp. 11417, 11484 and 11511.

² Ibid, p. 11500 ff.

his "hope and expectation"—with Mr. Harold Stanley on Niagara Hudson Power Co. business;¹ there was offered in evidence the written agreement between the Harris Trust & Savings Bank and Harris Forbes & Co. concerning the respective division of the security originations and participations of those two organizations.² Finally, the committee heard considerable testimony on the now famous "library understanding" of May 5, 1920, between Messrs. J. P. Morgan and H. P. Davison, of J. P. Morgan & Co., and Robert Winsor, of Kidder, Peabody & Co., relating to A. T. & T. financing.³

In my considered opinion, the testimony on agreements and understandings which is being presented before this committee by the S. E. C.'s Investment Banking Section is highly significant. These treaties, agreements, and understandings are the sinews of the prevailing method of doing business; they form the framework of banker-issuer relations and are the essence of the system of negotiated prices.

According to the resolution of the Congress which created this committee, restrictions upon competition and concentration of economic power—wherever they may appear in the American economic scene—are matters of concern.

This morning, Mr. Nehemkis will present to the committee testimony on the first of a series of understandings or agreements between investment banking firms—the understanding between Lehman Bros. and Goldman, Sachs & Co.

Mr. NEHEMKIS. Mr. Walter E. Sachs, Mr. John Hancock, please.

Acting Chairman KING. Do you solemnly swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SACHS. I do.

Acting Chairman KING. Mr. Hancock, do you solemnly swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HANCOCK. I do.

TESTIMONY OF WALTER E. SACHS, GOLDMAN, SACHS & CO., NEW YORK CITY, AND JOHN M. HANCOCK, LEHMAN BROS., NEW YORK CITY

Mr. NEHEMKIS. Mr. Sachs, will you state your full name and address, please?

Mr. SACHS. Walter E. Sachs, 120 East End Avenue, New York City.

Mr. NEHEMKIS. Mr. Hancock?

Mr. HANCOCK. John M. Hancock, Scarsdale, N. Y.

Mr. NEHEMKIS. Mr. Sachs, when did you first become a partner of the firm of Goldman, Sachs & Co.?

Mr. SACHS. January 1, 1910.

Mr. NEHEMKIS. When was Goldman, Sachs organized as a partnership, Mr. Sachs?

¹ Part 23, p. 12088.

² "Exhibit No. 1626-2," Part 22, p. 11525.

³ Part 23, p. 11872 ff.

Mr. SACHS. Well, the original partnership was organized in the year 1869; not under the name Goldman, Sachs & Co., but that was the origination of the partnership.

Mr. NEHEMKIS. Was not Goldman, Sachs & Co. originally a commercial paper house?

Mr. SACHS. That was our original business; yes, sir.

Mr. NEHEMKIS. And a commercial paper house acts as an intermediary between business enterprises and banks, does it not?

Mr. SACHS. Yes.

Mr. NEHEMKIS. It buys commercial paper from business enterprises and sells this paper to one or more banks?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. Now, as a result of its activities——

Acting Chairman KING (interposing). And the bank, I suppose, sold to individuals as they cared to purchase the paper.

Mr. SACHS. Yes; but in 99 percent of the cases I should say the buyers are banks, national banks, or trust companies.

Mr. NEHEMKIS. As a result of its activities in handling commercial paper, did not Goldman, Sachs become well acquainted with many business enterprises, their officers, their finances, and their credit needs?

Mr. SACHS. Yes; we established over the years many intimate relationships of that kind.

Mr. NEHEMKIS. But Goldman, Sachs never engaged in any underwriting activities during the first years of its existence despite these commercial contacts?

Mr. SACHS. No. As far as I can recollect, our first underwriting activity was about the year 1906.

Mr. NEHEMKIS. Mr. Chairman, I should say that we had hoped this morning to have Mr. Robert Lehman as a witness. Unfortunately, Mr. Lehman was taken ill with an attack of appendicitis last night. His partner, Mr. John Hancock, is appearing in his stead.

Mr. Hancock, when did you first become a partner of Lehman Brothers?

Mr. HANCOCK. 1924.

Mr. NEHEMKIS. There are some questions which I am going to ask you which were directed toward Mr. Lehman, and you may have some difficulties. If so, I will understand, and I am sure the committee will. Do you know when Lehman Brothers was first organized as a partnership?

Mr. HANCOCK. The date isn't a matter of history; it was about 1848; it might have been 1850, within that range of those 2 years.

Mr. NEHEMKIS. What was the nature of the original business of Lehman Brothers prior to its becoming an underwriting house?

Mr. HANCOCK. Traditionally, and I don't know more than that, primarily a banker in the cotton industry.

Mr. NEHEMKIS. A banker or a factor?

Mr. HANCOCK. A banker.

Mr. NEHEMKIS. A banker in the cotton industry.

Mr. HANCOCK. That is right; dealing in commodities in large degree, of course.

Mr. NEHEMKIS. Do you recall when Lehman Brothers first engaged in underwriting activities?

Mr. HANCOCK. 1906 or 1907, around the turn of the century.

Mr. NEHEMKIS. About the same time as Goldman, Sachs?

Mr. HANCOCK. I believe that they were together in the first venture.

EARLIEST FINANCING BY THE TWO HOUSES

Mr. NEHEMKIS. Mr. Sachs, was not the earliest financing undertaken by Goldman, Sachs & Co. with respect to a preferred stock issue about the year 1906 of a company that later became the General Cigar Company?

Mr. SACHS. That is correct. It was then known as the United Cigar Manufacturers.

Mr. NEHEMKIS. Two other houses were associated with you in this financing, Lehman Brothers and Kleinwort & Co., of London. Is that correct, sir?

Mr. SACHS. Lehman Brothers were—I would have to refresh my memory. Kleinwort Sons & Co. were associated with us in some businesses in subsequent years. I am not quite clear whether they were associated in the United Cigar Manufacturers business.

Mr. NEHEMKIS. We can correct the record at our convenience.

Mr. SACHS. I would think they were not but you may be entirely correct.¹

Mr. NEHEMKIS. Suppose we correct the record if there is a difference.

Assuming, however, that I am correct, suppose we proceed on that basis. Did not Goldman, Sachs, Lehman Brothers, and Kleinwort have equal shares in their financing?

Mr. SACHS. Yes; very likely it was a 3-3 account.

Mr. NEHEMKIS. And at this time Kleinwort & Co. was a very well recognized London banking house?

Mr. SACHS. Yes; they were one of the great merchant bankers of London, and are today.

Acting Chairman KING. Those associations were temporary?

Mr. SACHS. No, sir; our association with Kleinwort Sons & Co. dated from about the year 1898, and we still have a very close association with them, have had for a great many years.

Acting Chairman KING. In all activities or just some of the transactions?

Mr. SACHS. No, sir; in certain activities and certain specified businesses, and also a running relationship in the commercial banking business.

Mr. NEHEMKIS. The General Cigar Store financing, Mr. Sachs, marked, I believe, the first underwriting transaction in which your firm was associated with the firm of Lehman Brothers on an equal basis?

Mr. SACHS. That is correct.

RELATIONS BETWEEN THE FIRMS TO 1920

Mr. NEHEMKIS. Was not the relationship between the two firms, Goldman, Sachs & Co., and Lehman Brothers, so close at this time

¹ Mr. Sachs, under date of February 6, 1940, informed the committee that Kleinwort, Sons & Co., were not associated with Goldman, Sachs & Co. as originating bankers in the financing in 1906 of United Cigar Manufacturers. See appendix, p. 13011.

that if at any stage of the negotiations either firm had refused to go on, the other firm would in all probability have withdrawn from the financing?

Mr. SACHS. Very likely. I might explain, if I may, that the relationship was initiated at that time because of a very close personal friendship and personal relationship between Mr. Philip Lehman, who was the senior partner of Lehman Brothers, and Mr. Henry Goldman, who was one of the seniors of my firm.

Mr. NEHEMKIS. Is it not a fact, Mr. Sachs, that at this time the two firms had in effect decided to go into the investment-banking business as partners, although they would continue to operate under separate names and, of course, with separate physical establishments?

Mr. SACHS. I don't think it was quite like that. I think that that original business was done—and I don't know that in 1906 there was any preconceived plan as to the future—but I think it developed as a perfectly natural situation that subsequent businesses the following years were done together in the same way. In other words, at that time there was no written memorandum or anything, but it just developed because of this personal relationship between these two men whom I have mentioned.

Mr. NEHEMKIS. The two firms were associated together in many other pieces of financing after 1906, were they not?

Mr. SACHS. Yes; my recollection is that between 1906 and 1916—1917—that we financed initially about fourteen or fifteen different industrial companies.

Mr. NEHEMKIS. Would it be correct for me to say, Mr. Sachs, from 1906 until the World War, all of the financing of Lehman Brothers and Goldman, Sachs was undertaken jointly?

Mr. SACHS. All the issue business, of course.

Mr. NEHEMKIS. Issue business, originations.

Mr. SACHS. Originations—that is definitely my recollection.

Mr. NEHEMKIS. Am I also correct in understanding, Mr. Sachs, that where Lehman Brothers and Goldman, Sachs were the only underwriters, each firm usually shared in the participations on a 50-50 basis?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. And where other firms were brought in, the participations of the two firms remained equal?

Mr. SACHS. Yes.

Acting Chairman KING. Were these firms partnerships or did they become partnerships later?

Mr. SACHS. Goldman, Sachs was a partnership. I cannot speak for Lehman Brothers. My impression is it was also a partnership. During these years Goldman, Sachs was a partnership.

Mr. NEHEMKIS. And still is?

Mr. SACHS. It is a partnership today. I may say there was an intervening period when Goldman, Sachs & Company was organized as a joint-stock association under New York State laws.

Mr. NEHEMKIS. You have already indicated that during this period we have been discussing, 1906 up to the World War, there was never any written agreement between the two firms. The close relationship was based upon the close ties between the heads of the two houses and their friendship, so may I summarize the relationship

as follows: that it was that kind of close relationship which exists between any two close business associates?

Mr. SACHS. Right.

Acting Chairman KING (to Mr. Nehemkis). Where the element of friendship becomes paramount.

Mr. NEHEMKIS. Yes.

Mr. SACHS. It was kind of an informal partnership for that type of business.

Mr. NEHEMKIS. By 1920 had not the partners of Goldman, Sachs and their respective interests in the firm changed somewhat from what they had been before the World War?

Mr. SACHS. Yes; that is correct.

Mr. NEHEMKIS. Mr. Hancock, is it not also true that about this time the partnership interests of Lehman Brothers had changed somewhat from what it had been prior to the World War?

Mr. HANCOCK. My impression is that there was a moderate change of interest, but I was the first one outside the Lehman family to join the firm as a partner. I didn't come into the firm until 1924.

Mr. NEHEMKIS. Mr. Sachs, when did Mr. Waddill Catchings and Mr. Sidney Weinberg become admitted as members of the firm?

Mr. SACHS. Mr. Catchings was admitted on January 1, 1918. Mr. Weinberg, although a very important member of our organization, only became a partner on January 1, 1927. I might also say Mr. Henry Goldman retired from the firm at the end of the year, December 31, 1917.

Mr. NEHEMKIS. I take it there were during this subsequent period, that is to say after the World War, other changes in the partnership from its original membership.

Mr. SACHS. There may have been minor changes. Those were the major ones. There were no other partners admitted until the 'thirties after that.

Mr. NEHEMKIS. Mr. Hancock, you were admitted as a partner on August 1, 1924, were you not?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. And Mr. Monroe C. Gutman was admitted as a partner on January 1, 1927, is that correct?

Mr. HANCOCK. Correct.

Mr. NEHEMKIS. And Mr. Robert Lehman, who was to have appeared here this morning, was admitted as a partner July 1, 1921?

Mr. HANCOCK. Correct.

Mr. NEHEMKIS. Those were the major changes that took place in the partnership immediately after the war?

Mr. HANCOCK. Correct.

RELATIONS FROM 1920 TO 1926

Mr. NEHEMKIS. Mr. Sachs, between the years 1920 and 1928, was there not a change in the previous underwriting relationship between the two firms, that is to say, Goldman, Sachs for instance engaged in pieces of financing in which Lehman Brothers did not participate?

Mr. SACHS. Well, if my recollection is correct, those changes only began to take place around 1926. There was a difference of feeling developing.

Mr. NEHEMKIS. That is to say in some of these financings Lehman Brothers was not offered a participation.

Mr. SACHS. Well, not prior to 1925.

Mr. HANCOCK. Not that I know of.

Mr. SACHS. Not that I know of. There was little financing during the war. The first piece of issue business was in 1918, which was Endicott Johnson Corp. business.

Mr. NEHEMKIS. May I attempt, subject to your corroboration, which is always difficult with two witnesses, to summarize this relationship. Please tell me if I have it correctly. There were financings in which Goldman, Sachs and Lehman Brothers had equal participations and equal profits—bear in mind our time period, if you will. There were financings in which Goldman, Sachs alone participated but shared its profits with Lehman Brothers, and finally there were a few isolated cases where Lehman Brothers had neither participation nor profits in Goldman, Sachs business; is that correct?

Mr. SACHS. That was subsequent to 1915 or 1916, however.

Mr. NEHEMKIS. With that qualification, you accept my characterization of the situation?

Mr. SACHS. Yes.

Mr. HANCOCK. May I add, by participations you also mean obligations, I take it. You include the obligations in the participations.

Mr. NEHEMKIS. What do you mean by obligations?

Mr. HANCOCK. The risk in the contract.

Mr. NEHEMKIS. Yes; but I am not interested in that now, Mr. Hancock.

Acting Chairman KING. It is a fact, I suppose, if there were losses they would be deducted from the profits, and all participating would have to share those losses according to their respective interests.

Mr. HANCOCK. That is right.

Mr. NEHEMKIS. I assumed that.

Mr. HANCOCK. I wanted to be sure; that is all.

Mr. NEHEMKIS. As illustrative of the situation where Goldman, Sachs alone participated but divided the profits with Lehman Brothers, there are a number of exhibits relating to the financing of B. F. Goodrich Company which I should like you to identify for the record, if you will. I now show you four letters. Would you be good enough to examine them and tell me if you recognize them to be copies of originals in your files and in your custody?

For your convenience, may I say, Mr. Sachs and Mr. Hancock, each of the exhibits that will be offered to you for identification bears on the top of the exhibit a legend indicating the respective files from which it was obtained. I think you may assume that we have been accurate in that respect and that will save you considerable time.

Mr. SACHS. Yes; I recognize these.

Mr. NEHEMKIS. Mr. Chairman, I offer in evidence the four letters identified by the witness.

(Committee conference off the record.)

Acting Chairman KING. They may be received. Do you want them printed?

Mr. NEHEMKIS. I think in this case they are all relevant.

(The letters referred to were marked "Exhibits Nos. 1773 to 1776" and are included in the appendix on pp. 12713-12714.)

Mr. NEHEMKIS. Mr. Hancock, during this same period did not Lehman Brothers observe a similar practice with respect to financing in which Goldman, Sachs was not a member of the underwriting or purchase group?

Mr. HANCOCK. I think that is correct.

Mr. NEHEMKIS. I now show you three letters which are illustrative of this practice and involve an issue by Detroit City Gas Co. in 1922. That, as you recall, was an issue of \$13,500,000 first mortgage 6's of 1947, series "A." Will you examine these three documents, Mr. Hancock, and tell me whether or not they are true and correct copies of originals in your possession and custody?

Mr. HANCOCK. They are.

Mr. NEHEMKIS. And as further illustration of the same practice, I ask you to examine two documents relating to the financing of R. H. Macy & Co. in 1922 and 1926. Will you be good enough to examine these two documents? Are they true and correct copies of originals in your possession and custody?

Mr. HANCOCK. They are.

Mr. NEHEMKIS. These five documents, Mr. Chairman, identified by the witness are offered in evidence.

Acting Chairman KING. They may be received.

(The documents referred to were marked "Exhibits Nos. 1777 to 1781" and are included in the appendix on pp. 12714-12716.)

EVENTS LEADING TO MEMORANDUM OF 1925

Mr. NEHEMKIS. Mr. Hancock, did not Goldman, Sachs and Lehman Bros. have an equal underwriting participation in the financing in 1924 which resulted in the creation of the National Dairy Products Corporation?

Mr. HANCOCK. My impression is they did. I can verify it by the summary I have here.

Mr. NEHEMKIS. Give me your best recollection at this time, subject to your privilege of checking the record later. What is your answer?

Mr. HANCOCK. My answer is their participation was equal.¹

Mr. NEHEMKIS. Mr. Sachs, at this time were not two partners of your firm, Mr. Catchings and Mr. Dauphinot, devoting a great deal of time to the affairs of National Dairy Products?

Mr. SACHS. Yes. I must make the correction that Mr. Dauphinot was not a partner. Mr. Catchings was. Mr. Dauphinot was a very trusted member of the organization. Other than that, your statement is correct.

Acting Chairman KING. In other words, he was an employee but not a partner.

Mr. SACHS. That is correct; a very trusted employee.

Mr. NEHEMKIS. Did not Goldman, Sachs feel as the result of the efforts of these two men and others in the organization devoting a great deal of their time to the development of the company, that Goldman, Sachs was entitled to a larger compensation in connection with any transactions that might be effected?

Mr. SACHS. Yes, sir.

¹ Mr. Hancock, under date of February 16, 1940, confirmed this statement. See p. 13008, paragraph numbered 1.

Mr. NEHEMKIS. Goldman, Sachs also believed that the same situation might develop with respect to Lehn & Fink.

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. And if this situation should materialize, did not Goldman, Sachs feel this preferential position should also be recognized by Lehman Bros.?

Mr. SACHS. That is correct.

Acting Chairman KING. That is to say, there were some transactions in which one side of the two firms, or one of the two firms, occupied a more important position than the other, by reason perhaps of former associations with the business enterprises.

Mr. SACHS. Yes; or a great amount of work being done in that particular situation.

Mr. NEHEMKIS. As the result of this view which we have been discussing, Mr. Sachs, did not various conferences take place between the two firms with respect to rearranging their relative interests in future financing by these two companies?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Did not these conferences finally terminate in a conference at the home of Mr. Arthur Sachs on the night of October 25, 1925?

Mr. SACHS. I take your word for the date. I know it was the latter part of 1925.

Mr. NEHEMKIS. Will you state the partners of Goldman, Sachs who were present at this conference at the home of Mr. Arthur Sachs?

Mr. SACHS. I think Mr. Catchings and Mr. Arthur Sachs were at that particular conference.

Mr. NEHEMKIS. Was Mr. Arthur Sachs then the senior partner of the house of Goldman, Sachs?

Mr. SACHS. No.

Mr. NEHEMKIS. A senior partner?

Mr. SACHS. A senior partner, but we have no senior partner. He was a senior partner.

Mr. NEHEMKIS. Mr. Hancock, are you familiar with the names of the partners who were present at the conference in behalf of the House of Lehman?

Mr. HANCOCK. I am.

Mr. NEHEMKIS. And their names, please?

Mr. HANCOCK. Herbert Lehman and Arthur Lehman.

Mr. NEHEMKIS. Herbert H. Lehman is now Governor of the State of New York?

Mr. HANCOCK. Right.

Mr. NEHEMKIS. And is Arthur Lehman now connected with the firm?

Mr. HANCOCK. He is deceased.

Mr. NEHEMKIS. Was not Mr. Arthur Lehman senior partner of the firm at that time?

Mr. HANCOCK. It looks like collusion, but my answer is the same as Mr. Sachs'. We have older partners. We have no senior partners.

Mr. NEHEMKIS. I have to keep checking up on you two, you see.

Mr. Sachs, as the result of the conference which took place at the home of Mr. Arthur Sachs, was there not prepared a memorandum, the purpose of which was to govern the future relations between the two firms?

Mr. SACHS. Yes; that is a fair statement.

Acting Chairman KING. All relations, or just some?

Mr. SACHS. Relations in connection with what is popularly known as the issue business.

Mr. NEHEMKIS. We are going into that, Senator, in a moment.

I show you, Mr. Sachs, a memorandum dated October 26, 1925. I ask you to examine this memorandum and tell me if that is not the memorandum resulting from that conference.

Mr. SACHS. Yes; it is.

Mr. NEHEMKIS. Will you pass it on to Mr. Hancock, and will you tell me, Mr. Hancock, whether you recognize that as the memorandum of October 26, 1925? Incidentally, it was obtained from your files, Mr. Hancock.

Mr. HANCOCK. It must be the right one. I had the impression it was signed by Herbert Lehman.

Mr. NEHEMKIS. Just answer my questions, Mr. Hancock, as we proceed.

Mr. Sachs, who was the draftsman of this memorandum?

Mr. SACHS. My impression is that it was Herbert Lehman.

Mr. NEHEMKIS. Mr. Hancock, what is your impression?

Mr. HANCOCK. That is my impression.

Mr. NEHEMKIS. Can either of you be more positive and tell me it was drafted by him?

Mr. SACHS. Yes; because there is a subsequent letter which substantiates that.

Mr. NEHEMKIS. Mr. Sachs, what is your answer?

Mr. SACHS. I know it was.

Mr. NEHEMKIS. Mr. Hancock, what is your answer?

Mr. HANCOCK. I know it was drafted by him.

Mr. NEHEMKIS. The memorandum is now offered in evidence.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1782" and is included in the appendix on p. 12717.)

Acting Chairman KING. Is the material merely for the purpose of showing that these two firms cooperated together in work subsequent to this?

Mr. NEHEMKIS. Sir, it is rather difficult for me to answer that question. I expect to develop precisely the implications of your question through these two witnesses.

Mr. Sachs, was not one of the problems settled by the conference the relationship of the two houses with respect to the future financing of Lehn & Fink and National Dairy Products Co.?

Mr. SACHS. Yes.

Mr. NEHEMKIS. I now read a portion of that memorandum to you [reading from "Exhibit No. 1782"]:

Our joint relation to all Companies previously financed by the two houses was to remain exactly as it had been in the past, save that a different arrangement be entered into now with regard to the National Dairy Products Co. and later possibly with regard to Lehn & Fink.

With the exception of these two companies, Mr. Sachs, was it not determined that the relationship of the two firms to all of the old business would remain on an absolutely equal basis?

Mr. SACHS. That is correct.

MEMORANDUM OF JANUARY 5, 1926

Mr. NEHEMKIS. Now, it would appear, Mr. Sachs, would it not, that Governor Lehman's efforts at mediation between the two firms did not result in a clear definition of the rights and responsibilities of the two houses to each other?

Mr. SACHS. Yes; that would be indicated by the later memorandum of January 5.

Mr. NEHEMKIS. And on January 5, 1926, did not the two firms again attempt to codify their relationship to each other with a memorandum?

Mr. SACHS. With respect to these old businesses; yes, sir.

Mr. NEHEMKIS. Now, Mr. Sachs, I show you a memorandum dated January 5, 1926, and I ask you to identify this as being a true and correct copy of that memorandum to which reference has been made.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. Will you show it to Mr. Hancock? Do you identify it as a true and correct copy of the memorandum in question?

Mr. HANCOCK. I do. I would like to make a little explanation. The first memorandum didn't purport to be a final agreement.

Mr. NEHEMKIS. I will give you full opportunity to develop that.

Acting Chairman KING. I think that is a proper interpretation of it.

Mr. NEHEMKIS. The memorandum identified by the witnesses is offered in evidence, Mr. Chairman.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1783" and is included in the appendix on p. 12718.)

Mr. NEHEMKIS. Who was the draftsman, Mr. Sachs, of this memorandum?

Mr. SACHS. I couldn't say who the actual individual was.

Mr. NEHEMKIS. It was more or less a cooperative effort by various people?

Mr. SACHS. I think very likely.

Mr. NEHEMKIS. What is your recollection?

Mr. HANCOCK. My impression is Mr. Catchings and Mr. Lehman worked it out together.

Mr. NEHEMKIS. Which Mr. Lehman?

Mr. HANCOCK. Herbert Lehman.

Mr. SACHS. That may be.

Mr. HANCOCK. I never saw any drafting work done. The two men were working together on the draft, I know.

Mr. NEHEMKIS. Mr. Sachs, I note that this memorandum is divided into nine sections or articles and contains an appendix, and the appendix lists 60 corporations. Mr. Sachs, is it not a fact that the corporations covered by this memorandum issued approximately \$200,000,000 of securities within the next decade, and that the issuance of these securities was governed by the memorandum of 1926?

Mr. SACHS. The next decade from where?

Mr. NEHEMKIS. From 1926.

Mr. SACHS. I can't substantiate your figure because I haven't gone back to the record. There was a very substantial amount of financ-

ing done by some, not all, of these companies in the subsequent years.¹

Mr. NEHEMKIS. Now I want to read from paragraph 1 of the memorandum dated January 5, 1926, which reads as follows [reading from "Exhibit No. 1783"]:

With respect to the corporations specified on the attached list it will be the desire of the two firms to do any financing which may arise in the future upon the basis of the same relative interest in such financing which the firms had in the original business with respect to such company.

Mr. Sachs, does not the phrase "same relative interest" in this paragraph 1 mean that the interests of Goldman, Sachs and Lehman Brothers were to be equal?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Where only Lehman Bros. and Goldman, Sachs were to be involved, the interest of each under paragraph 1, was to be 50 percent?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Where other houses in addition to Lehman Bros. and Goldman, Sachs were involved, the interests of each would be equal to half of the remainder after allotment to any of the other houses.

Mr. SACHS. That is correct, always with the exception of the two companies.

Mr. NEHEMKIS. Paragraph 1 continues as follows [reading further from "Exhibit No. 1783"]:

Such business shall be handled either in the office of Goldman, Sachs & Co. or in the office of Lehman Brothers as indicated on the attached list.

According to the list attached to the memorandum, Mr. Sachs, was not the financing of 41 companies to be handled in the office of Goldman, Sachs, while the financing of 19 companies was to be handled in the office of Lehman Bros.?

Mr. SACHS. I accept your count.

Mr. NEHEMKIS. This division, therefore, Mr. Sachs, reflected, did it not, the sphere of interest of each house in the joint venture?

Mr. SACHS. May I ask what you mean by the sphere of interest?

Mr. NEHEMKIS. Just what you meant when you set down in two categories 41 corporations under Goldman, Sachs, and 19 under Lehman Bros.; nothing different.

Acting Chairman KING. 19 might issue more than the 41.

Mr. SACHS. Yes, but I think in fact they did not.

Mr. NEHEMKIS. Mr. Hancock, this division, therefore, reflected the sphere of each interest in the joint venture, did it not?

Mr. HANCOCK. I think not.

Mr. NEHEMKIS. What did it mean, then?

Mr. HANCOCK. It reflected the historical record as to what firm had handled the business originally in their office.

Mr. NEHEMKIS. Neither house, however, Mr. Sachs, was to receive any additional compensation for handling the financing in their own office.

Mr. SACHS. No; not at that time.

¹ Mr. Sachs, under date of February 6, 1940, submitted supplemental information on this point. See appendix, p. 13011. See also Mr. Hancock's comment under date of February 16, 1940, appendix, p. 13010, paragraph beginning "Regarding page 485—."

Mr. NEHEMKIS. Yet of course there were expenses involved in handling the financing.

Mr. SACHS. The expenses were generally charged to the banking syndicate formed in connection with such issue rather than to joint account.

Mr. NEHEMKIS. Now, paragraph 2 of the memorandum of January 5, 1926, reads and provides that [reading further from "Exhibit No. 1783"]:

Each firm shall endeavor to maintain the present relationship of the other firm or of any of its members with the respective listed companies.

If each house maintained its relationship with the issuer, I take it the participations of the two houses together would be larger, would it not?

Mr. SACHS. I don't follow that question; I am sorry.

Mr. NEHEMKIS. I say, if each house, your house and Lehman Bros., maintained its relationship with the issuing corporation, continued that relationship, the participations you each would have in the business would of course be larger than if you did not maintain the relationship.

Mr. SACHS. You mean if we didn't have the business at all, yes, it is quite obvious.

Mr. NEHEMKIS. I just want you to tell me that.

I want to read to you the first clause of paragraph 3 of the memorandum [reading further from "Exhibit No. 1783"]:

If any of the listed companies refuses in the future to have either firm participate in a piece of financing, the other firm will endeavor to have such excluded firm afforded a full opportunity of presenting its case.

This provision meant, in effect, did it not, Mr. Sachs, that if both firms were not jointly designated to handle this financing, either Goldman, Sachs, or Lehman Bros., as the case might be, would use its good offices to permit the excluded firm to present oral argument, so to speak, before the board of directors? Correct, sir?

Mr. SACHS. Correct; but I also think it brings out one very interesting fact, that in spite of this mutual agreement between Goldman, Sachs, and Lehman Bros., corporations in every instance were perfectly free agents and were under no obligation, contractual or otherwise, to do business with either firm or both firms.

Mr. NEHEMKIS. I think that is correct; they could have gone to anybody.

Mr. SACHS. They could have gone to anybody.

Mr. NEHEMKIS. However, as the subsequent testimony shows, they preferred not to.

Mr. HENDERSON. Mr. Nehemkis, may I ask a question? Did you regard the agreement as binding upon each other?

Mr. SACHS. At that time it was an understanding as expressed in these terms; yes, sir. It wasn't from our point of view, at least, an agreement that that could not have been changed at any future time; it had no term; it didn't last so and so many years.

Mr. HENDERSON. Your point is this wasn't binding on the 60 firms that were mentioned in their relationships with each other.

Mr. SACHS. My point is exactly that; it is the relationship between the two banking houses and had nothing to do with the relationship of these various industrial and mercantile firms with either or both

of the banking houses; that there was no contractual relationship as to future business.

Mr. HENDERSON. But in the past the business had generally followed the lines that had been indicated.

Mr. SACHS. These were old relationships, old clients, with whom we had a very pleasant and a very intimate relationship. They considered us as their financial advisers, just as a man goes to his lawyer or to his physician, and without contract the relationship had continued because apparently in the minds of those who conducted these corporations we were giving effective financial service.

Mr. HENDERSON. But assuming that there was no overthrow or any extraordinary circumstance, you had reason to believe that the financing would go about like that in the future; that is, go in the future as it had in the past.

Mr. SACHS. Yes. To put it quite simply, we believed as long as we did a good job we would get future business from these companies.

Acting Chairman KING. You understood that there were other banking and investment organizations throughout the United States who perhaps were soliciting business and you were in competition with them?

Mr. SACHS. We not only understood it, Senator; we knew it. We suffered from it occasionally.

Mr. HENDERSON. But in relation to these 60 companies, competition had never been effective enough to get it away from them, had it?

Mr. SACHS. I will have to look at the list for just a moment. I think my answer would agree to that, but I want to be quite sure.

Mr. HENDERSON. I think you did lose some part of that business.

Mr. SACHS. I think there are certain exceptions; yes, sir. My associate just reminds me that—I don't see their name here—Underwood Typewriter, yes, Underwood Typewriter—new elements came in; I think we might consider the fact, for instance, while the B. F. Goodrich business was originally done between the three houses, the Bankers Trust Co., the Guaranty Trust Co., and Kleinwort & Sons, became associated in that. There was always the element, the danger, of competition.

Mr. HENDERSON. There was the danger, but it didn't come to fruition to such an extent that you lost much business.

Mr. SACHS. No. I think the answer was that we did a good job, if I may say so.

Acting Chairman KING. At any rate, these firms whose paper you had taken and made the extension of credit, they were satisfied with the terms upon which they did business with you?

DIRECTORSHIPS IN COMPANIES FINANCED THROUGH INVESTMENT BANKERS

Mr. SACHS. Yes, sir; and I think there is another element to be taken into consideration, and that is that in the periods between successive financings, we spent a great deal of time as financial advisers; we were on the boards of directors in most instances, and we gave a great deal of our time and a great deal of our thought to the welfare and the development of these companies. In other words, we were not the investment bankers only at the time when there was an issue to be made, but we were their financial advisers and investment bankers in the intermediate periods.

Mr. O'CONNELL. Did I understand you to say for most of these companies your firms were represented on the board of directors?

Mr. SACHS. In most cases, sir yes.

Mr. O'CONNELL. Would you say that was an element helpful to you people, to your firm in maintaining the business?

Mr. SACHS. I think it was. I would be very glad to state what our theory on that was. I am speaking for the moment for Goldman, Sachs & Co. We went on the board of directors because we sold these securities to the public and we in a sense represented the interests of the public in being on the board of directors and in that way knowing what was going on in a company. In many instances I think we probably could not have sold the securities as successfully if we had not indicated that we were going on the board because the general American public in these early years was not as investment minded, and certainly as far as equity securities were concerned, and we considered an element of strength all around to go onto these boards, and it became a very common practice in our instance. I think, in practically every instance we had some member of our firm who was represented on the board of directors.

Mr. NEHEMKIS. In fact, in some instances, Mr. Sachs, not only did your firm and Lehman Brothers act from the very beginning, you were instrumental in putting together many of these corporations, and as the testimony will subsequently show, one of the conditions of the very financing was that you would be represented on the board and have a continuing perspective over financial plans and programs. Isn't that correct?

Mr. SACHS. Yes; it was not part of the contract, but it was an understanding that we should go on the board. After all, it was subject to reelection by the stockholders.

Acting Chairman KING. You felt a moral responsibility, if not a legal responsibility, having issued the securities through your firm, to see that the organization whose securities you issued were in a solvent and going condition all the time.

Mr. SACHS. Exactly. We felt a certain moral responsibility for having sold these securities.

Acting Chairman KING. You didn't want to sell securities of companies whose solvency or ability to maintain themselves in the market you doubted.

Mr. SACHS. We tried to do business with companies that had the possibility of continued growth and development and profitable operation.

Acting Chairman KING. Some of those companies were babies, so to speak, were they, when the securities were first issued?

Mr. SACHS. Yes, sir; many of them were very, very much smaller. I could show you a balance sheet in our office of Sears, Roebuck & Co., in 1897, showing a net worth of \$275,000. Ten years later we bought \$10,000,000 of their 7-percent preferred stock. Today the company makes an annual profit of \$40,000,000 a year. We are very proud of that record.

Mr. O'CONNELL. I was interested in your statement to the effect that you would be represented on the board of directors of your companies as a sort of representative of the public, feeling you were protecting the public interest in that respect. That is somewhat dif-

ferent from the function of the other members of the board of directors of an issuing corporation, I should take it. Sort of a public obligation, an obligation to the public as a member of the board of directors of the issuing company.

Mr. SACHS. I can't see quite that it is different, because, after all, every member of the board of directors is interested primarily in the success and development of the company. As we wished our public to have and hold securities that would increase in value, our interest was exactly the same, it seems to me. We were primarily interested in the soundness and development of the company.

Mr. O'CONNELL. You think that the interest of the issuing company, and the interest of the public, and the interest of Goldman, Sachs in the underwriting of securities are all one?

Mr. SACHS. I think very identical, yes; except the fact I might add when there was occasionally a new issue, we made a banker's fee out of it, which we were very glad to make.

Acting Chairman KING. You assume that if you sold an issue of a corporation, and that corporation failed, that it would be more or less of a reflection upon you, and to that extent might injure the public who had bought the securities and at the same time perhaps have some little effect upon the reputation of your firm.

Mr. SACHS. Why, certainly. I mean every firm can make mistakes, of course. They try to make as few mistakes as possible.

Acting Chairman KING. So there was an interest in the public and your interest was in seeing that your issues were sound and that the corporation or partnership with which you identified yourself in the sale of securities was continued along reasonable lines so as to insure safety and the public confidence.

Mr. SACHS. That is right.

Mr. MILLER. May I ask a few questions of the witness? I notice, Mr. Sachs, that on this list, they are all industrial companies, with the exception of one railroad, the French railroad, Paris-Lyons-Mediterranean, and the American Light & Traction Co. All the rest were industrials. In most of these instances, were the securities that were sold equity securities? By equity securities I mean common stocks or preferred stocks instead of bond obligations.

Mr. SACHS. I think we would find by checking up in most instances the sale was a combination of preferred stocks and common stocks. There were some instances, I think, where only common stocks were sold, and a few, a very few where only a preferred stock was sold. Generally speaking, it was a combination sale of some preferred shares and common shares; subsequently, in some instances it was debentures, or bonds, but these were somewhat rarer.

Mr. MILLER. As a matter of fact, when you did a good deal of this financing, was that not really the introduction to the public, to investing public, of that type of security? That was not the generally accepted thing that had prevailed during the earlier period.

Mr. SACHS. I think it was very definitely a new departure; yes, sir; and not only the preferred stocks, but certain provisions that were put in them which were somewhat new, notably that if the preferred dividend was passed for four periods, then the preferred stock had a vote. Also, I think it was a new departure that companies of this kind sold their equity securities to the public. There were some very definite reasons for that, I mean the necessity of men who owned

private businesses in toto, because of the development of the inheritance tax, and so forth, the necessity of liquefying the investment in these companies in the face of death duties.

Mr. MILLER. In these equity issues, the question of management—and particularly in some of these industries, these mercantile concerns—was of utmost importance, and was that one of the main concerns, reasons for your putting directors on these boards because of the fact that if the management wasn't good, the company probably would have a very precipitous downward career? It isn't like a railroad, it isn't like a public utility, which has a better organized base.

Mr. SACHS. That is correct. We consider management of utmost importance in companies of this sort. It has always been our policy not to interfere with management if management was sound and getting along well; it was only in occasional instances where the board of directors, of whom we were one, had to consider the question of finding management. That did occur, of course.

Mr. MILLER. There were instances where you were able to assist in finding management of particular ability?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. We were speaking earlier, Mr. Sachs, of the clause of paragraph 3¹ which provided that in case one of the two firms were excluded, the other would afford the excluded firm an opportunity to be heard. Do you recall any instances in which Goldman, Sachs attempted to secure a hearing for Lehman Bros.?

Mr. SACHS. I think the Pillsbury case was one. I don't know if that is the case you have in mind.

Mr. NEHEMKIS. Do you know of any others?

Mr. SACHS. Goodrich—I wish you would refresh my memory.

Mr. NEHEMKIS. Would you, in the interest of making the record complete on that, Mr. Sachs, have one of your associates prepare a little statement about that and let us have it at the earliest convenience?

Mr. SACHS. I would be glad to.²

Mr. NEHEMKIS. Mr. Hancock, do you recall any instance in which Lehman Brothers afforded Goldman, Sachs an opportunity for oral argument, so to speak, before a corporation covered by the list?

Mr. HANCOCK. I believe it was done in the case of Macy.

Mr. NEHEMKIS. R. H. Macy?

Mr. HANCOCK. Right.

Mr. NEHEMKIS. Do you know of any others?

Mr. HANCOCK. I don't recall any.

Mr. NEHEMKIS. Are you sure?

Mr. HANCOCK. I am sure I don't recall; I am not sure it didn't happen.

Mr. NEHEMKIS. May I make the same suggestion to you, if you will let us have a memorandum?

Mr. HANCOCK. I will be glad to.³

Mr. MILLER. Were you always successful when you went to the mat for the other fellow?

¹ "Exhibit No. 1788."

² Mr. Sachs, under date of February 6, 1940, submitted the information requested. It is included in the appendix on p. 13011.

³ Mr. Hancock, under date of February 16, 1940, submitted the information requested. It is included in the appendix on p. 13008, paragraph numbered 2.

Mr. SACHS. No, sir.

Mr. HANCOCK. I make the same answer.

Mr. NEHEMKIS. Continuing from Paragraph 3, this clause reads, [reading from "Exhibit No. 1783"]:

but if the corporation in question still maintains its refusal the other firm shall be free to do the business itself either alone or with other houses.

Mr. Sachs, wasn't either Goldman, Sachs or Lehman Bros. free to do business with the company that objected to one of the firms?

Mr. SACHS. Well, my recollection is that it hadn't come up prior to this time. We just had this practice of doing business each with the other.

Mr. NEHEMKIS. Isn't it also true, Mr. Sachs, that in the years prior to the time we are discussing, because of the close personal friendship and business relationship between the partners, there was a general feeling that if something wasn't good for one firm, well, it wasn't good for the other firm?

Mr. SACHS. Well, there was a feeling, yes, of these two men whom I mentioned before who were intimate associates. I presume if one didn't like the business, the other one said, "Let's drop it," that kind of relationship.

Mr. NEHEMKIS. But prior to the memorandum of January 5, 1926, and the business experience of the two firms preceding that period, would it not be correct to say that such a situation as was covered by Article 3 would never have arisen?

Mr. SACHS. Very likely not. I will admit that.

Mr. NEHEMKIS. I think I have one other point in article 3 to call your attention to. I continue reading [reading further from "Exhibit No. 1783"]:

offering to the other firm its participation in the profits and losses provided the company in question does not object to such offering.

Now, I take it, Mr. Sachs, the effect of this provision was that even if one firm were excluded from the financing, it would still share in the underwriting profits.

Mr. SACHS. Yes; it could still be offered its share. That did happen in some instances.

Mr. NEHEMKIS. Under this covenant, it was not necessary to ask the company for permission to divide such profits, was it?

Mr. SACHS. No; unless the company specifically would object to it. I mean they might inquire into it, I suppose.

Mr. NEHEMKIS. Had you up to the time of this agreement always asked for such permission in such cases?

Mr. SACHS. I think not; I wouldn't say positively.

Mr. NEHEMKIS. Had you ever asked for permission? Did you usually ask for permission?

Mr. SACHS. No; not usually. It may have come up in some instances in the course of discussion of a piece of business with one of these issuers.

Mr. NEHEMKIS. Let me ask you to turn to paragraph 5 of the agreement of January 5, 1926. I read from that clause [reading from "Exhibit No. 1783"]:

If the future financing results from, or pertains to a corporation resulting from, a consolidation of one or more of the corporations included in the accompanying list, and such corporation or corporations or its or their stock

holders receive (including a proportionate share of what the Bankers acquire) less than one-half of the total securities, including cash, issued in connection with the consolidation, then the firm originating the consolidation shall endeavor to give the other firm an interest in the financing substantially equivalent to the proportion which such other firm's interest in the original financing of the listed corporation in question bears to the total new securities issued on the consolidation.

As I read that, as I have read that clause on other occasions, I take it it means that the "proprietary interest," to use the phrase associated with A. T. & T. financing, of each firm in a company's financing, was recognized, shall we say through thick and thin, through merger, consolidation, absorption, or purchase. Is that substantially correct.

Mr. SACHS. Yes; except that "proprietary interest" is perhaps a strong term.

Mr. NEHEMKIS. I qualified it as being used in another connection.

Mr. HENDERSON. Well, Mr. Sachs, is it too strong a term in view of the historical banking relation? Didn't you acquire or seem to acquire some kind of a continuing interest that amounts almost to a "proprietary interest" in that financing?

Mr. SACHS. It was only a "proprietary interest" if the business was done, if the issuer agreed to do the business.

Mr. HENDERSON. We agreed a little while ago, did we not, that the business was done? That is, you had something there which was a valuable interest, did you not?

Mr. SACHS. If the interest was there it was to be divided in certain ways, that is perfectly correct, but I really must repeat that there was no contractual relationship with the issuer which would indicate definitely that the interest was to be there.

Mr. HENDERSON. If you had reduced it to a contract and made it binding on all the firms, which is quite logical to assume, of course, there would have been something which you could have peddled around and divided up and sold, and the like; in other words, you could have obtained a considerable financial return for it. But in effect, without the contractual relationship, without anything binding on the issuer, you did have something which was still extremely valuable.

Mr. SACHS. Yes. I also must repeat what Mr. Hancock indicated, that was, it was an obligation as well as a possible piece of profitable business. It worked both ways.

Mr. HENDERSON. I didn't presume you had a one-way franchise or a one-way vested interest here. I am not suggesting that, but you took issue with the strength of the term "proprietary interest". Is that it?

Mr. SACHS. Yes. Property is something that you actually own. We didn't actually own the business as far as financing was concerned.

Mr. HENDERSON. You were on the boards of directors of firms which you financed?

Mr. SACHS. Yes; we were 1 director out of 10 or 20, whatever the board of directors was. That meant nothing. We didn't control these boards of directors. We didn't own any shares of stock in these companies, except perhaps a nominal amount. I would like to make that point while we are discussing it, that the fact that we were on these boards of directors meant in no sense of the word,

that we or our firm in any sense of the word controlled these companies or these businesses.

Mr. HENDERSON. These companies followed proprietary interests in financing; I didn't assume you were dominating the corporations.

Mr. SACHS. No, indeed.

Acting Chairman KING. This agreement to which counsel has called your attention could be terminated at any moment?

Mr. SACHS. That was my understanding of it; yes, sir.

Mr. O'CONNELL. Terminated how, by mutual consent?

Mr. SACHS. By either party.

Acting Chairman KING. It wasn't a hard and fast rule that bound you for 1 year or 10 years; you could repudiate it the next day?

Mr. SACHS. That is my understanding.

Acting Chairman KING. Either one.

Mr. SACHS. Yes, sir.

Acting Chairman KING. Without the consent of the other.

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Mr. Sachs, the interest of the two firms in the financing of a merger or consolidated company under the covenant that we have been addressing ourselves to, was equal to an interest, and now I quote from paragraph 5 [reading from "Exhibit No. 1783"]:

substantially equivalent to the proportion which such other firm's interest—

That is to say, Goldman, Sachs, or Lehman, depending upon who had originated the financing of the consolidation—

in the original financing of the listed corporation in question bears to the total new securities issued on the consolidation.

I take it that the merger of any of the corporations listed in the appendix to the agreement did not relieve Goldman, Sachs, or Lehman Bros., of their partnership obligations to each other. Is that correct?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. Now, I ask you to turn with me, if you will, to clause 6 of the agreement [reading further]:

With regard to any financing not pertaining to any of the listed corporations either firm is at liberty at any time to make proposals to the other firm, but neither firm is under any commitment to the other excepting to the extent voluntarily made in each case.

I take it, Mr. Sachs, this article meant in effect that the relationships governing the 60 corporations was fixed, but that with respect to new business, each firm was under no restriction to the other.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. Now, prior to the date of this treaty, if I may so refer to it, did either firm have any commitment to the other with regard to new financing?

Mr. SACHS. Prior to this date?

Mr. NEHEMKIS. Yes.

Mr. SACHS. No; but as I pointed out, in those early years it seems to have been just practice that one firm went to the other in case there was a new piece of business.

Mr. NEHEMKIS. Now, I want you, if you will, to turn to the last part of paragraph 6 [reading further from "Exhibit No. 1783"]:

In thus relieving each firm of such commitments, banks, or security houses committed through either firm were similarly relieved.

Will you be good enough, Mr. Sachs, to explain which banks, which investment banking firms, were also joined to Goldman, Sachs and Lehman Bros. by commitments?

Mr. SACHS. Well, I haven't a list in mind. There were a number of people that were associated at one time or another, notably Kleiwort, Sons & Co., in London, and in a number of instances I think some business was done with Halsey Stuart in the traction business, I believe, and with the Bankers Trust Co. and the Guaranty Trust Co. in the Goodrich business. There may have been some other businesses.

Mr. NEHEMKIS. If I correctly understand the situation, it may be explained as follows: Where one firm was relieved of its commitment, all other firms or banks associated with that firm were likewise released from any commitment.

Mr. SACHS. Yes; I think that is a correct interpretation.

Mr. NEHEMKIS. Is that your understanding, Mr. Hancock?

Mr. HANCOCK. Substantially so. I think you have given a little too tangible a meaning to that, because there are commitments that are oral in character that survive, with reference to finder's fees, for example.

Mr. NEHEMKIS. Are you generalizing about legal draftsmanship, or are you confining yourself to the meaning of the last part of clause 6?

Mr. HANCOCK. I am confining myself to the last three lines of clause 6.

Mr. NEHEMKIS. Will you proceed, sir?

Mr. HANCOCK. The effort in that was to cover that kind of commitment. That was recognized in good morals, but was not a legal commitment.

Mr. HENDERSON. Could you give me a tangible instance that comes to your mind as to how this took place?

Mr. HANCOCK. I don't recall instances; I can recall a type. For example, a piece of business might have been under discussion on the part of Lehman Bros. with a certain industrial company, and there might have been anyone in the finder's position who had brought that business to us. We might have talked with Goldman, Sachs about the possibilities of doing that business some day and then when we change our relationship as to that, they are relieved of any obligation to that firm. We carry it ourselves. That is the character of transaction referred to here.

Mr. HENDERSON. Does that pertain only to a finder's fee?

Mr. HANCOCK. It might be any other kind of an obligation.

Mr. HENDERSON. Would it be a reciprocal obligation?

Mr. HANCOCK. There was no reciprocal obligation.

Mr. HENDERSON. No; but if you had gotten, say, a piece of business through bankers, and a commitment originated there, then they would have a participation in any new business that you got. Would that be the kind of commitment that was involved?

Mr. HANCOCK. I don't know; that never happened in our firm, so far as I know.

Mr. SACHS. You say "findings"; sometimes a security house, naturally—

Mr. HENDERSON. I wanted to find out whether it ran further than just a finder's fee.

Mr. NEHEMKIS. Mr. Sachs did indicate, Mr. Commissioner, I think, in part in answer to your question that other houses associated with, let us say, the Goldman, Sachs group would be relieved of any obligation to continue as members of the Goldman, Sachs group, if Goldman, Sachs pursuant to the clause in question were relieved of its commitment. It follows also that all members of the Lehman group, including any number of houses, I take it, in a particular piece of financing, previously associated with the Lehman group, would *a fortiori* be likewise relieved of their commitments to Lehman Bros. provided Lehman was relieved of its commitment to Goldman, Sachs. Does that sum it up?

Mr. HANCOCK. In general terms; yes.

PARAGRAPH EIGHT OF MEMORANDUM OF 1926

Mr. NEHEMKIS. Now, I ask you, if you will, to turn to paragraph 8 [reading further from "Exhibit No. 1783"].

Wherever joint financing business is done for any of the listed corporations the names of the two firms shall be used.

Mr. HANCOCK, in the matter of the appearance of a banking house, advertising is purely a prestige question, is it not?

Mr. HANCOCK. Correct.

Mr. NEHEMKIS. Nevertheless, under paragraph 8 it was specifically covered.

Mr. HANCOCK. Correct.

PARAGRAPH SEVEN OF THE MEMORANDUM OF 1926

Mr. NEHEMKIS. Now, under paragraph 7 of the agreement, each firm also had the right to participate in trading accounts of the other with respect to the 60 corporations set forth in the appendix to the agreement. Is that correct?

Mr. HANCOCK. Right.

Mr. NEHEMKIS. Would you explain briefly to the committee, Mr. Hancock, what is meant by a trading account?

Mr. HANCOCK. I think trading accounts were of several types but the most important type and the one that has recurred most through the history of our firm has been in connection with a distribution of a new issue. The underwriters, not necessarily all, but the leaders, and those who chose to join in, would form a trading account for the purpose of insuring a good distribution of the stock, of this new stock, to the public. I suppose its major purpose was stabilization; it was hoped of course that it would be profitable, too. The same character of transaction would take place in a secondary distribution, where the large initial block had to be distributed, where some large holder would like to distribute his large holding. The trading account might then be handled and those securities would be sold customarily on the exchange, occasionally through dealers if that seemed to be the need of the situation.¹

¹ Mr. Hancock, under date of February 16, 1940, supplemented this testimony. See appendix, p. 13009, reference to "Page 489, first column."

Mr. HENDERSON. Making a market, or stabilizing, and if any profit accrued, it was to be jointly divided.

Mr. HANCOCK. By the ratio set up in the account.

Mr. HENDERSON. And to be managed by the two houses?

Mr. HANCOCK. Ordinarily it was managed by one.

Mr. HENDERSON. Stabilizing operations would be managed by one of the two houses?

Mr. HANCOCK. In fact, but also in fact the men in the two firms would be talking to each other on the 'phone very frequently and seeing each other very frequently. They knew each day what they were doing.

Mr. NEHEMKIS. Mr. Hancock, will you follow me as I read to you paragraph 7 of the agreement [reading further from Exhibit No. 1783]:

Any trading account formed by either firm in association with any of the listed corporations or any official thereof shall be managed by the firm specified on the accompanying list with respect to such corporations, but each firm shall be free to determine its relative participation in such trading account, having the option to participate in the primary profit and losses thereof up to its proportion in the original business of the two firms with respect to such corporation. Except as herein provided each firm shall be free to form and manage trading accounts in any securities of the listed corporations.

Is it not a fact, Mr. Hancock, that the provisions with respect to trading accounts apply to trading in outstanding securities of the 60 corporations as well as their newly issued securities?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. And under paragraph 7, is it not a fact that officers and stockholders of the 60 companies likewise participated in such trading accounts?

Mr. HANCOCK. Sometimes; not always.

Mr. NEHEMKIS. They had that privilege if you so elected.

Mr. HANCOCK. If they so requested and we consented.

Mr. NEHEMKIS. And you elected to permit them to share.

Mr. HANCOCK. Yes.

Mr. HENDERSON. That is, in connection with any of the older underwritings which you undertook, it was permissible at that time for the corporation itself, or for the officers or the stockholders, to enter into a trading account with either of you people?

Mr. HANCOCK. So far as I know the corporation never entered the trading account.

Mr. HENDERSON (reading):

* * * any of the listed corporations * * *.

Mr. HANCOCK. It is conceivable; I don't think it happened; as far as I recall it didn't. It happened with regard to large stockholders of the corporation.

Mr. HENDERSON. It would be independent of the underwriting agreement?

Mr. HANCOCK. As a document contract, yes; but it might happen about the same time.

Mr. HENDERSON. It would be almost sure to happen about the same time. I mean that in connection with an underwriting there was usually a stabilizing operation, was there not?

Mr. HANCOCK. It might have followed thirty days afterwards. There was no pattern; it would depend upon the needs of the situation.

Mr. NEHEMKIS. I don't think you quite answered Mr. Henderson's question. Under clause 7 of the agreement, theoretically it was possible for a trading account to be formed with any of the listed corporations.

Mr. HANCOCK. In theory that is correct.

Mr. NEHEMKIS. Is it not a fact, Mr. Hancock, that Lehman Bros. and Goldman, Sachs each had a one-third interest in various trading accounts in securities of Archer-Daniels-Midland Co. between the years 1927 and 1933.

Mr. HANCOCK. I think so, but I can verify it.

Mr. NEHEMKIS. Will you accept that subject to future correction? I merely say that in the interest of time.¹

Mr. HANCOCK. Yes.

Mr. NEHEMKIS. Mr. Sachs, did not Goldman, Sachs and Lehman Bros. each have various trading interests in the accounts of Sears, Roebuck & Co.?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. And many others?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Did not Goldman, Sachs and Lehman Bros. act jointly and divide commissions in trading accounts involving outstanding securities held or owned by officers or directors covered by the agreement of January, 1926?

Mr. SACHS. Yes.

Mr. HENDERSON. Did that cover commissions from such trading operations?

Mr. SACHS. Commissions—I suppose you mean commissions involved in connection with sales of securities on the exchanges.

Mr. HENDERSON. That is what I mean. If one of the two handled all the trading operations and there was a commission derived, it was to be split.

Mr. SACHS. Yes; in these particular accounts we were referring to.

Mr. NEHEMKIS. For example, Mr. Sachs, when the estate of Julius Rosenwald attempted to dispose of 50,000 shares of stock in 1933, did not Goldman, Sachs and Lehman Bros. act jointly in arranging for the sale?

Mr. SACHS. I don't know who arranged it originally, but it is a fact that commissions earned from the sale of those securities were divided between the two firms.

Mr. NEHEMKIS. Your recollection is correct. Do you happen to recall the amount of the commissions you divided?

Mr. SACHS. I don't.

Mr. NEHEMKIS. May I refresh your recollection by telling you it was \$30,964?

Mr. SACHS. I will accept that.

Acting Chairman KING. That is your commission for disposing of 50,000 shares amounted to \$30,000.

Mr. SACHS. Those are the ordinary Stock Exchange commissions, I presume, laid down by the Stock Exchange. There was an additional commission. I beg your pardon, I would like to correct that statement. Plus some additional commission which was arranged between the estate and the firms.

¹ Mr. Hancock, under date of February 16, 1940, confirmed the preceding testimony. See appendix, p. 13008, paragraph numbered 3.

Mr. NEHEMKIS. So that the record may be complete, I am going to ask you a full question and give you a chance to respond to it. Did you not jointly share commissions with Lehman Bros. in connection with an additional 26,000 shares of Sears for the Rosenwald Fund later in the same year?

Mr. SACHS. I don't recall your figures.

Mr. NEHEMKIS. You may accept them subject to correction.

Mr. SACHS. Right.¹

Mr. NEHEMKIS. I want to ask you, Mr. Sachs, to identify for me four letters pertaining to these transactions, if you will. You have before you a letter from Goldman, Sachs to Lehman Bros. dated June 26, 1933, a letter from the Rosenwald Fund to Goldman, Sachs dated June 27, 1933, and a letter from Goldman, Sachs to Lehman Bros. dated June 27, 1933, and another one dated July 21, 1933. Are those letters true and correct copies of originals in your custody?

Mr. SACHS. Yes, sir.

Acting Chairman KING. There is no controversy? I am asking that as a preliminary to the question. Do you think it is necessary to insert the letters in the record?

Mr. NEHEMKIS. If you wish, they need not.

Acting Chairman KING. You may summarize them later if you desire. They will be identified and filed with the clerk.

Mr. NEHEMKIS. Will the reporter mark the letters identified for the record?

(The documents referred to were marked "Exhibits Nos. 1784 to 1787" and are on file with the committee.)

Mr. NEHEMKIS. Mr. Sachs, in December of 1933, did not Goldman, Sachs purchase 8,966 shares of Lehn & Fink common stock for the account of Lehn & Fink Products Co.?

Mr. SACHS. I will have to ask my associate about that.

Mr. NEHEMKIS. If you want to ask any one of your associates to join you on this I think it might be helpful.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. And were not these commissions on brokerage transactions shared with Lehman Bros.?

Mr. SACHS. That is my recollection; yes, sir.

SHARING COMMISSIONS ON TRADING AND BROKERAGE ACCOUNTS

Mr. NEHEMKIS. Mr. Hancock, is not the privilege of sharing in trading or brokerage accounts generally extended to the underwriters who are regarded as the bankers for a company?

Mr. HANCOCK. Generally not, so far as I know.

Mr. NEHEMKIS. Usually?

Mr. HANCOCK. No.

Mr. NEHEMKIS. Sometimes?

Mr. HANCOCK. Occasionally; yes.

Mr. NEHEMKIS. And in the case of Goldman, Sachs and Lehman, usually?

¹ Mr. Sachs, under date of February 6, 1940, confirmed these figures. See appendix, pp. 13010-13011.

Mr. Robert V. Horton, of Goldman, Sachs & Co., subsequently stated to the committee, by way of clarification, that the 26,000 shares of capital stock of Sears, Roebuck & Co. were sold for a trio account, as shown by "Exhibits Nos. 1784 through 1787."

Mr. HANCOCK. With regard to these companies, I think invariably.

Mr. NEHEMKIS. Thank you very much. For example, did not Lehman Bros. share commissions on trades for the account of the Aviation Corporation and affiliates during 1933 with Brown Brothers Harriman & Co.?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. And also with respect to stock of Columbia Broadcasting System in 1934?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. And did not Lehman Bros. share commissions with Kuhn, Loeb & Co. in connection with purchases of the 3½ percent sinking fund debentures of 1952 for the account of Tidewater Associated Oil Co.? That was in 1938.

Mr. HANCOCK. Correct.

Mr. NEHEMKIS. And this sharing of commissions resulted from the fact, did it not, that Kuhn, Loeb and Lehman Bros. were joint managers of the syndicate?

Mr. HANCOCK. No; I wouldn't say entirely that.

Mr. NEHEMKIS. Did any other members of the syndicate share in the commissions?

Mr. HANCOCK. Not so far as I know. Maybe I can explain how it happened. There is no mystery about it.

Mr. NEHEMKIS. I want you to explain, but I do want the record to show what your answer was, if you can give me an answer to my question. I will repeat my question to you. This sharing of commissions resulted, did it not, from the fact that Kuhn, Loeb and Lehman Bros. were joint managers in the syndicate. Can you answer that?

Mr. HANCOCK. In some cases, yes; in some cases, no.

Mr. NEHEMKIS. Now, you want to make some explanation. Will you proceed?

Mr. HANCOCK. The handling of the case would depend upon the facts in the individual case. It would be perfectly easy in the case of the Rosenwald estate, which you have referred to, to give us orders to sell, and we would have the commissions on the one-half which we would do for their account. They could then turn to Goldman, Sachs and ask them to handle a similar amount and they would have had their own commission on their direct share of it. In order to simplify the operation it was put into one place, one man handled the whole transaction all through, and being a fellow member of the Stock Exchange we were allowed to share commissions and we did. That is the usual procedure, and that is usually the way it happens.

Mr. NEHEMKIS. How many years have you been in the investment-banking business?

Mr. HANCOCK. About 15 plus.

Mr. NEHEMKIS. 15 plus. In your vast experience do you know of any instance where members of a syndicate, other than the manager or managers, have ever shared in the commissions derived from a trading account?

Mr. HANCOCK. I haven't thought of your question before, and I don't think of a case at the moment, but please leave out the words "vast experience," will you?

Mr. NEHEMKIS. I will withdraw that phrase if it makes you feel better. Will you give the committee the benefit of your advice by a memorandum on that point? Discuss it with your associates.

Mr. HANCOCK. On the question of whether—

Mr. NEHEMKIS. Whether you know of any case where a member of a group other than the manager or comanager has shared in the commissions derived from trading-account operations.

Mr. MILLER. Mr. Nehemkis, aren't we talking about two types of commissions? If you are talking about Stock Exchange commissions you would be precluded under the rules of the Stock Exchange, would you not, from sharing with anybody but a member of the Exchange?

Mr. HANCOCK. Right.

Mr. MILLER. If you are talking about commissions that weren't Stock Exchange commissions, then you might be free, would you not, to share with others if you cared to do so.

Mr. NEHEMKIS. I am sorry if my question wasn't clear, Mr. Miller. I was addressing myself to the latter.

Mr. MILLER. To the commissions that were not Stock Exchange? You were addressing yourself to commissions which were not Stock Exchange commissions?

Mr. NEHEMKIS. Yes.

Mr. HANCOCK. I misunderstood your line of questioning. These things we were talking about were Stock Exchange commissions. I will be very glad to get a statement of the kind you want.¹

Mr. NEHEMKIS. So that whenever the co-manager of an issue, Mr. Hancock, buys or sells that security for the account of the issuing company or directly for important stockholders of the issuer he is under an obligation to share profits on such transactions with the co-manager?

Mr. HANCOCK. No; he is not. In the case of our two firms; yes.

Mr. NEHEMKIS. But in the case of other such transactions, such as you have just testified for Kuhn, Loeb, Brown Bros. Harriman transactions, how did it happen that you shared in those commissions?

Mr. HANCOCK. I am satisfied in the case of the Aviation Corporation that there were two members of the board, one partner from our firm, one from Brown Harriman and rather than divide the exchange business and let two men handle them separately they put them in the hands of one and the two men agreed to divide equally when they got through.

Mr. NEHEMKIS. Let me see if I follow you on that. Let's take the trades for the account of Aviation Corporation and affiliate. In whose hands was the account placed, Brown Brothers Harriman & Co. or yourself?

Mr. HANCOCK. I have no recollection. The memorandum shows it was in our office.

Mr. NEHEMKIS. On what basis of morality, ethics, or obligation, or however you want to characterize it, was your firm constrained to share those commissions with Brown Brothers Harriman & Co.? Why didn't you share any of the others with someone else? Why was it just Brown Brothers Harriman & Co.? That is why I am trying to get you to give me a response.

¹ Mr. Hancock, under date of February 16, 1940, submitted the information requested. See appendix, p. 13008, paragraph numbered 4.

Mr. HANCOCK. I wasn't the man who made the arrangement, but I am confident beyond any question that Averell Harriman, of the Brown Harriman firm, and Robert Lehman, of our firm, were asked to do a piece of business, and this was merely a method, a convenient method, of handling it. There was no question of ethics or anything else involved—a convenient way of handling a simple business operation.

Mr. NEHEMKIS. I am merely trying to explore your answer to see if I understand it and the committee does.

Mr. MILLER. Were these Stock Exchange commissions in the Aviation Corporation case or were they other commissions?

Mr. NEHEMKIS. These were Stock Exchange commissions.

Mr. MILLER. I think that is what you have got to make clear.

Mr. NEHEMKIS. These were Stock Exchange Commissions.

You have also testified, Mr. Hancock, a moment ago that Lehman Bros. shared commissions with Kuhn, Loeb & Co. in connection with purchases of the 3½ percent sinking-fund debentures of 1952 for the account of Tidewater Oil. How did it happen that commissions were shared there? This is a Stock Exchange commission. Let me ask you a preliminary question; perhaps this will aid you. Who was the leader of the account, Lehman Bros. or Kuhn, Loeb?

Mr. HANCOCK. It was a divided management and they led the bonds and we led the stock.

Mr. NEHEMKIS. Right. How did it happen you both shared commissions on that deal?

Mr. HANCOCK. I don't personally know. I can do some surmising.

Mr. NEHEMKIS. I don't want you to do that. You wouldn't want to do that yourself. Will you follow our usual practice and let us have a memorandum on that point? I am going to repeat the question which caused the argument, retracing our tracks, and see if now, having tracked and double-tracked, we will come out with a conclusion. Wherever the co-manager of an issue buys or sells that security for the account of the issuer or directors or important stockholders of the issuer, is he not under some obligation to share profits on such transactions with the co-manager of the account?

Mr. HANCOCK. I know of no such obligation generally prevailing, though it was specifically covered with regard to our two firms, and the reason for the obligation in our case was that it had been specifically stated in the agreement.

Mr. NEHEMKIS. And you want this committee to understand that in several instances concerning which you have testified, the sharing of commissions was just a pure coincidence?

Mr. HANCOCK. No, I didn't say that.

Acting Chairman KING. Will you make such explanation as you care to make?

Mr. HANCOCK. So far as I know, the relatively few cases in all the activity over the years arose because of the set of facts in each case. In the great majority of cases I would say it was a convenient way of handling it and it was handled that way for no other reason than that it was convenient.

Mr. NEHEMKIS. I accept your statement. I think there are probably other factors involved, but then you have agreed to see if you can't enlighten the committee on it.¹

(Mr. Henderson took the chair.)

Mr. NEHEMKIS. May I ask you this question. May not this sharing of commissions be one of the reasons why a managership of an account is so attractive, Mr. Hancock? I will repeat the question. Is not the sharing of commissions one of the reasons why the managership of an account is considered to be rather attractive?

Mr. HANCOCK. Do you mean being a member of a management?

Mr. NEHEMKIS. No; being the manager.

Mr. HANCOCK. Is attractive to him because he gives something away?

Mr. NEHEMKIS. Is attractive to him because he has the right to bring someone else in on the sharing of commissions and therefore may place that other party under a reciprocal obligation to him?

Mr. HANCOCK. No. He cannot give a sharing except for services rendered, or with the consent of the Exchange.

Mr. O'CONNELL. What were the services rendered by Brown Harriman & Co.² in connection with this Aviation stock handled by your company?

Mr. HANCOCK. The two firms had originated the business. The origination of it and the developing of the business was the important part of it. The purely mechanical worth of handling it was the minor part.

Mr. O'CONNELL. But after the business had been originated and the issue floated, the trading account continued, I take it, or was set up even after that point, and the trading account was handed by Lehman Bros.

Mr. HANCOCK. Yes, sir.

Mr. O'CONNELL. And the commissions received by you through the operation of the trading account were shared with Brown Harriman & Co.

Mr. HANCOCK. Right.

Mr. O'CONNELL. Now, at that time what services were being rendered by Brown Harriman & Co. in connection with the operation of the trading account?

Mr. HANCOCK. There was undoubtedly discussion every day between the man in our firm who was managing the account and the man in their firm who was supervising it for them. I am talking usual practice; that has been the usual practice, done without exception, so far as I know.

Mr. O'CONNELL. So that the successful operation of the trading account by Lehman Bros. was dependent upon services rendered by Brown Harriman & Co. in connection with the operation of the trading account. Is that what you mean?

Mr. HANCOCK. No.

Mr. O'CONNELL. What services were rendered?

Mr. HANCOCK. There were services rendered by two people which were merged and agreed to be paid for in the division.

¹ Mr. Hancock, under date of February 16, 1940, submitted the information requested. See appendix, p. 13008, paragraph numbered 4.

² The reference is to Brown Brothers Harriman & Co. See p. 12374, infra.

Mr. O'CONNELL. You are talking about the origination of the business now.

Mr. HANCOCK. No. This particular business with Brown Harriman¹ involved a sharing of Stock Exchange commissions, the purchase of securities by the Aviation Corporation on the New York Stock Exchange—

Mr. NEHEMKIS (interposing). Now, that was Lehman Bros.' business. How did Brown Brothers Harriman & Co. figure in it?

Mr. HANCOCK. That wasn't Lehman Bros.' business. They didn't think so, certainly. Both had an interest in the original interest.

Mr. NEHEMKIS. Since the question has arisen, how did you receive your instructions to enter into the transaction; from whom?

Mr. HANCOCK. I don't know.

Mr. NEHEMKIS. As far as your recollection serves at the present time, precisely what did Brown Brothers Harriman & Co. do in connection with this transaction? What were the physical labors performed; the mechanical services rendered? Do you know?

Mr. HANCOCK. I can't speak with certainty on this particular case. I speak only of the general practice, the general procedure that applied to all cases.

Mr. NEHEMKIS. Does Mr. Gibbs, your associate, know?

Mr. EDWIN GIBBS (Lehman Bros.). No—

Mr. NEHEMKIS. Give your answer to Mr. Hancock and off the record. Let me ask you a formal question. Do you accept as being your answer the answer that Mr. Dean has furnished you and Mr. Gibbs?

Mr. HANCOCK. I haven't given you the answer yet.

Mr. NEHEMKIS. You are about to give it.

Mr. HANCOCK. I am not going to give you the answer Mr. Dean gave me.

Mr. NEHEMKIS. Fine. It will be your own information?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. Don't take offense.

Mr. HANCOCK. I'm not taking offense.

Mr. NEHEMKIS. Proceed, Mr. Hancock.

(The question was read: "Precisely what did Brown Brothers Harriman & Co. do in connection with this transaction? What were the physical labors performed, the mechanical services rendered? Do you know?")

Mr. HANCOCK. I don't know. I'll be glad to get all the facts about it.

Mr. NEHEMKIS. And submit it later?

Mr. HANCOCK. I can answer in a general line, however, that will cover all this kind of cases.

Mr. NEHEMKIS. I would like to proceed to the particulars and then give you an opportunity, if you will, to send the committee a memorandum on the general practice. Let me go over once again certain testimony you have given. You have testified that Lehman Brothers shared commissions with Kuhn, Loeb & Co. in connection with the purchases of 3½ percent sinking fund debentures of 1952 for the account of Tidewater Associated Oil Co. That was a transaction which took place in 1938. Was that a joint account between Lehman Brothers and Kuhn, Loeb or was Kuhn, Loeb the manager alone? I am referring to the original offering.

Mr. HANCOCK. In the original offering we were—

Mr. NEHEMKIS (interposing). Joint managers?

¹ See footnote 2, preceding page.

Mr. HANCOCK. Joint managers. As I explained, however, they were on the bonds and we on the stock.

Mr. NEHEMKIS. Right. Now, what work in connection with the purchases of those debentures did Kuhn, Loeb do? Do you know?

Mr. HANCOCK. I don't as a matter of fact; no. It is a general practice, though, that—

Mr. NEHEMKIS (interposing). Let me just—excuse me, sir; I want to afford you every opportunity to complete your testimony, but it is necessary for my purposes that this record be complete in all respects, and so, if I interrupt, it is only because I want the record to show a logical sequence. Now, what did Lehman Brothers do in connection with this transaction?

Mr. HANCOCK. I don't know.

Mr. NEHEMKIS. And you will furnish the answer to that question?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. And you also have very graciously agreed to make available a memorandum to the committee on the general practice.

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. Very well.¹

LIFE OF MEMORANDUM OF 1926

Mr. NEHEMKIS. Now, Mr. Sachs, may I turn to you for a moment? This document,² the agreement of January 5, 1926, which we have been discussing, which Mr. Hancock has been giving testimony about likewise, was considered so vital to the interests of your respective firms that you requested advice of counsel as to its form, did you not?

Mr. SACHS. I have no doubt it was submitted to counsel; yes.

Mr. NEHEMKIS. Do you know the name of counsel?

Mr. SACHS. Our counsel was Sullivan and Cromwell.

Mr. NEHEMKIS. Did not this agreement remain operative until February 6, 1936?

Mr. SACHS. Well, I should say that on February 6, 1936, or thereabouts, there was an exchange of letters between Lehman Brothers and Goldman Sachs & Co. which certainly put into the discard this memorandum; there had been differences of opinion that had arisen before that date of February 6.

Mr. NEHEMKIS. But actually the treaty was operative up until that date, in terms of identifying it.

Mr. SACHS. Right.

Mr. NEHEMKIS. During this decade, am I correct in understanding that only one provision was modified; namely, clause 7 dealing with trading accounts?

Mr. SACHS. Yes; there was a letter, an exchange of letters.

Mr. NEHEMKIS. I show you a letter which purports to have been written by Mr. Waddill Catchings to Mr. Philip Lehman, dated January 26, 1927, and ask you to examine this document and tell me whether or not it is a true and correct copy of an original in your possession and custody.

Mr. SACHS. Yes; it is.

¹ Mr. Hancock, under date of February 16, 1940, submitted the information requested. See appendix, p. 13008, paragraphs numbered 4 and 5.

² "Exhibit No. 1783."

Mr. NEHEMKIS. Will you examine it, Mr. Hancock, and tell me whether you find that to be a true and correct copy of an original in your possession and custody?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. The document, Mr. Chairman, is offered in evidence.

Acting Chairman HENDERSON. The document, having been identified, may be received.

(The letter referred to was marked "Exhibit No. 1788" and is included in the appendix on p. 12720.)

HANDLING FINANCING UNDER THE MEMORANDUM OF 1926

Mr. NEHEMKIS. Mr. Sachs, I now show you letters on four cases which illustrate the manner in which the two firms handled specific pieces of financing under the agreement. Will you examine the following exhibits, which I propose to offer in evidence, and tell me whether you recognize them to be true and correct copies of originals in your possession and custody? One refers to Gimbel Brothers, another to May Department Stores, a third to B. F. Goodrich Co., and the last to Pillsbury Flour Mills.

Will the record show that these are but seven exhibits, referring to four cases, of a number of other letters which are not being offered?

Mr. SACHS. Yes, sir; I recognize those letters.

Mr. NEHEMKIS. Thank you, sir. Mr. Chairman, may I offer in evidence the documents just identified by the witness?

Acting Chairman HENDERSON. Do you wish them inserted in the record?

Mr. NEHEMKIS. I would like them printed, sir.

Acting Chairman HENDERSON. The documents, having been identified, may be received and printed in the record.

(The letters referred to were marked "Exhibits Nos. 1789 to 1795" and are included in the appendix on pp. 12720-12724.)

Acting Chairman HENDERSON. We will recess until 2:30.

(Whereupon, at 12:15 p. m. the committee recessed until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at 2:30 p. m. upon the expiration of the recess.

Acting Chairman HENDERSON. The committee will be in order.

TESTIMONY OF WALTER E. SACHS, GOLDMAN, SACHS & CO., NEW YORK CITY; JOHN M. HANCOCK; LEHMAN BROS, NEW YORK CITY—Resumed

Mr. NEHEMKIS. Mr. Hancock, I wonder if you wouldn't care to correct the record. In the course of your testimony this morning you referred to Brown Brothers Harriman & Co. as Brown Harriman & Co.¹ Would you like to indicate that you had in mind Brown Brothers Harriman & Co.?

Mr. HANCOCK. Right, I would.

¹ *Supra*, pp. 12371-12372.

STOCKHOLDER AND OFFICER PARTICIPATION IN TRADING ACCOUNTS

Mr. NEHEMKIS. Mr. Sachs, you recall this morning that we were speaking of trading accounts. Under article 7 of the agreement¹ it is possible, is it not, for a trading account to be formed in association with any of the listed corporations, or any official of such corporations. That is correct, is it not, sir?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. Do you recall whether or not such trading accounts have been formed with officials of any of the listed corporations in the past?

Mr. SACHS. Yes; I do. I can specifically recall in connection with, for instance, the May Department Stores Co; I think that is one.

Mr. NEHEMKIS. Do you recall who the individuals were?

Mr. SACHS. My recollection is they were the wives of some of the principals. I am not certain of that.

Mr. NEHEMKIS. Does this refresh you: Mrs. Rosa May and Mrs. Florence G. May, each of whom had a 25-percent participation?

Mr. SACHS. Right.

Mr. NEHEMKIS. Is it not a fact that in connection with trading accounts of Cluett, Peabody & Co., E. H. Benson and associates had a 50-percent participation and D. G. Cluett and associates also had a 50-percent participation?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. And in connection with a trading account of Continental Can Co., Carle Conway, Charles Rich, and J. Horace Harding each had a 20-percent participation.

Mr. SACHS. Yes; but J. Horace Harding was not an official of the company. He was a partner of C. D. Barney & Co.

Mr. NEHEMKIS. But Carle Conway and Mr. Rich were officials.

Mr. SACHS. Carle Conway was. I don't think Rich was. Carle Conway definitely was.

Mr. NEHEMKIS. And in the case of the May Department Stores Co., as you have indicated, the two individuals previously mentioned had participations. Do you recall whether in the Munsing Wear, Inc., any individuals had participations in the trading account?

Mr. SACHS. I don't recall.

Mr. NEHEMKIS. Would this refresh your memory—a Mr. F. M. Stowell?

Mr. SACHS. Yes; he was the president of the company.

Mr. NEHEMKIS. His participation was equal, was it not, to 25 percent?

Mr. SACHS. Well, I don't recall; but I accept your figure.

Mr. NEHEMKIS. Now, in the case of Sears, Roebuck & Co. do you recall whether or not the Employees' Profit Sharing Fund of Sears, Roebuck had a 33⅓-percent participation?

Mr. SACHS. I do recall they had a participation and I accept that percent.

Mr. NEHEMKIS. And in the case of Spear & Co., is it not a fact that Nathaniel Spear had a 25-percent participation?

¹ "Exhibit No. 1783," appendix, p. 12718.

Mr. SACHS. I don't recall that.

Mr. NEHEMKIS. By the way who is Nathaniel Spear?

Mr. HANCOCK. He was the head, principal stockholder, and the president.

Mr. NEHEMKIS. Do you have any information that would confirm that statement?

Mr. HANCOCK. It was a trading account, No. 2, so-called in our books, March 21, 1935.

Mr. NEHEMKIS. What was the percentage of participation? The same as that which I mentioned, 25 percent.

Mr. HANCOCK. Twenty-five percent.

Mr. NEHEMKIS. And in the case of the Studebaker Corporation, Mr. Sachs, do you recall whether Mr. Erskine, Mr. F. S. Fiske, and Mr. James Studebaker, 3d, had participations in the trading account?

Mr. SACHS. Mr. Frederick Fish—I recall that was subject to confirmation; I don't know that specifically.

STOCKHOLDER AND OFFICER PARTICIPATION IN UNDERWRITING SYNDICATE

Mr. NEHEMKIS. Now, is it not also true, Mr. Sachs, that individuals from time to time have been given positions in the purchase group of originations brought out by Goldman, Sachs and Lehman Bros., pursuant to the terms of the treaty?

Mr. SACHS. Well, there have been instances of that sort; yes.

Mr. NEHEMKIS. And would not one of the purposes of giving an individual who might perhaps have been an officer of the company whose security was being brought out an opportunity to participate in the purchase group—would not the purpose have been to cement relationships between the firms and such company?

Mr. SACHS. Well, not necessarily. These very individuals were, of course, selling their own—a portion of their own—interest in these companies, and then if they wanted to participate—

Mr. NEHEMKIS. Isn't it rather unusual to have an officer of a company take a position in a purchase group?

Mr. SACHS. Well, in those days it occurred from time to time; it wasn't universal at all; it wasn't, perhaps, frequent, but it did occur.

Mr. NEHEMKIS. Did you in conjunction with Lehman Bros. bring out an issue for the Cuyamel Fruit Co. in 1920?

Mr. SACHS. Yes.

Mr. NEHEMKIS. And was not Mr. S. Zemurray given the largest single participation in the purchase group?

Mr. SACHS. Well, I don't recall.

Mr. NEHEMKIS. I show you a letter from Lehman Brothers addressed to your firm, among others, containing the statement I just made. I ask you to examine this letter and tell me whether or not it doesn't refresh your recollection. Does that refresh your recollection, Mr. Sachs?

Mr. SACHS. Yes. Of course, this company at the time was a privately owned company and I take it Mr. Zemurray was by far the chief stockholder. That is my recollection of it.

Mr. NEHEMKIS. Now, will you, while you have the letter in your hand, tell me the amount of the participation taken by Mr. Zemurray?

Mr. SACHS. \$1,000,000 out of the \$5,000,000.

Mr. NEHEMKIS. And that was the largest individual participation of any taken by the group?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Now, who was Mr. Zemurray and what was his official position?

Mr. SACHS. He was the president and chief stockholder of the Cuyamel Fruit Co.

Mr. NEHEMKIS. As a matter of fact that participation offered to Mr. Zemurray at that time involved Mr. Zemurray in no risk whatsoever; is not that correct?

Mr. SACHS. As to that I would have to refresh my memory on the terms of the—I should think he took his share of the risks involved in the business.

Mr. NEHEMKIS. How could he when he was a member of the purchase group and you had subsequent groups organized thereunder who were going to take on the various commitments?

Mr. SACHS. Well, we might not have been able to form those selling groups; it might have been incumbent on this group of two, four, six, eight people to take up their share of the bonds, all or such part as was not syndicated.

Mr. NEHEMKIS. Do you recall in this particular case that the deal was syndicated?

Mr. SACHS. I believe it was.

Mr. NEHEMKIS. Therefore, do you care to withdraw your previous statement that Mr. Zemurray did not assume any risk whatsoever?

Mr. SACHS. Well, I should suppose that the purchase group was formed first and the selling group afterwards.

Mr. NEHEMKIS. Right; and the purchase group received a profit on the transaction when it passed the deal on to the banking group, did it not?

Mr. SACHS. Yes; but I say it might not have been able to form the banking group.

Mr. NEHEMKIS. But in this case it did?

Mr. SACHS. It was successful; yes.

Mr. NEHEMKIS. Now, what is the relation between the Cuyamel Company and the United Fruit Co.?

Mr. SACHS. Oh, subsequently the United Fruit Co. purchased the Cuyamel Fruit Co. That was sometime after.

Mr. NEHEMKIS. And is it not a fact that one of the benefits to be derived by a banking house in permitting an officer of the company for whose securities underwriting is being done to share in the purchase group, as Mr. Zemurray did, is to solidify and cement good relations with that company?

Mr. SACHS. There might have been various reasons. I mean it might have been a question of the distribution of the risks. That is possible.

(Representative Williams assumed the Chair.)

Mr. NEHEMKIS. You identify this letter as a true and correct copy?

Mr. SACHS. Yes; I do.

Mr. NEHEMKIS. The letter is offered in evidence.

(The letter referred to was marked "Exhibit 1796" and is included in appendix on p. 12724.)

Mr. NEHEMKIS. Mr. Sachs, do you recall bringing out an offering for the Pet Milk Co. in 1928 in which your firm and Lehman Brothers each had equal interest?

Mr. SACHS. Yes.

Mr. NEHEMKIS. And do you recall who your other associates in the purchase group were?

Mr. SACHS. I don't recollect of my own memory, but my memory has been refreshed that Mr. J. S. Alexander and associates were.

Mr. NEHEMKIS. Will you tell me who J. S. Alexander and associates are, or were?

Mr. SACHS. J. S. Alexander at that time was president of the National Bank of Commerce, and the associates I suppose were some of the other officials in that bank. My recollection, I now remember, is that that business was brought to us through one of the vice presidents of the bank, Mr. Rovenský.

Mr. NEHEMKIS. And was not Mr. John Rovensky also a member of the purchase group?

Mr. SACHS. I believe he was; I think through one of the associates. He may have been independent.

Mr. NEHEMKIS. He acted as an independent.

Mr. SACHS. So he did.

Mr. NEHEMKIS. So that the participations in that group were Goldman, Sachs, $33\frac{1}{3}$; Lehman Brothers, $33\frac{1}{3}$; J. S. Alexander and associates, $16\frac{2}{3}$; and John Rovensky, $16\frac{2}{3}$. Now, may I ask you with reference to John Rovensky, will you tell me once again who he was?

Mr. SACHS. He was at that time a vice president of the National Bank of Commerce.

Mr. NEHEMKIS. Did Mr. Rovensky take that $16\frac{2}{3}$ percent participation for himself or was he acting for the bank?

Mr. SACHS. That I can't say; I don't know.

Mr. NEHEMKIS. You have no knowledge at all?

Mr. SACHS. I certainly don't recall.

Mr. NEHEMKIS. Would it be fair for me to assume that it is most unlikely that Mr. John Rovensky could have taken $16\frac{2}{3}$ -percent participation in an underwriting syndicate?

Mr. SACHS. I don't know what his question of wealth was at that time.

Mr. NEHEMKIS. So you would not care to say.

Mr. SACHS. I believe that Mr. Alexander was reputed to be a wealthy man. I don't recall, that is so many years ago.

Mr. NEHEMKIS. You don't think I would be justified in stating at this time that Mr. John Rovensky could not conceivably have taken that $16\frac{2}{3}$ participation for himself individually and that he must have been acting for the bank?

Mr. SACHS. Well, I can't say positively of my own knowledge. I wish I could, I would be glad to answer it.

Mr. MILLER. Mr. Nehemkis, what was the nature of the underwriting, was it bonds or stocks?

Mr. NEHEMKIS. I think probably we had better ask Mr. Sachs.

Mr. SACHS. It was a common-stock issue.

Mr. MILLER. Would a bank be apt to underwrite a common stock?

Mr. SACHS. This was done by the individuals.

Mr. MILLER. What was the dollar value involved in the 16 $\frac{2}{3}$ percent?

Mr. SACHS. Not very large. It was a relatively small issue.

Mr. HANCOCK. Roughly a million and half.

Mr. NEHEMKIS. There were 55,161 shares without par value, \$33 share.

Mr. SACHS. Sixteen percent was about \$300,000.

Mr. NEHEMKIS. About that.

Mr. SACHS. Sixteen percent was about \$300,000.

Mr. NEHEMKIS. Were you through, Mr. Miller?

Mr. MILLER. Yes.

Mr. NEHEMKIS. Will you examine this letter and tell me whether you recognize it is to be a true and correct copy of the original in your possession?

Mr. SACHS. I don't see the final page of the letter.

Mr. NEHEMKIS. You see the caption, Goldman, Sachs & Co.

Mr. SACHS. Oh, yes; it is our letterhead, and I have no question about it.

Mr. NEHEMKIS. I think the legend we used probably has fallen off.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. The letter, Mr. Chairman, is offered in evidence.

Acting Chairman WILLIAMS. It may be received.

(The letter referred to was marked "Exhibit 1797" and is included in the appendix on p. 12725.)

(Discussion off the record between Mr. Hancock and Mr. Nehemkis.)

Mr. NEHEMKIS. I would like Mr. Hancock to make a statement for the record.

Mr. HANCOCK. I think it might help to an understanding of the whole facts in connection with the Cuyamel Fruit Co. testimony and the interest of Mr. Zemurray of \$1,000,000 in the largest single participation in the account. I think it would help if it were understood that Mr. Zemurray took no profits out of that; that he showed his good faith in the value of the securities underwritten by him without expectation of profit. It was done on his part, as I believe, to convince the banking firm that the security was good and in fact had his personal guaranty of a million dollars expressed in that form.

Mr. NEHEMKIS. Do I understand correctly, Mr. Hancock, that Mr. Zemurray took no profit comparable to that taken by the other bankers?

Mr. HANCOCK. He took no profit in the group; the 13 $\frac{1}{4}$ percent on his share was divided among the remainder of the group.

Mr. NEHEMKIS. Was your statement predicated upon some documentation that you have in your possession?

Mr. HANCOCK. Yes, sir; and memory, too.

ABROGATION OF MEMORANDUM OF 1926 IN 1936

Mr. NEHEMKIS. Mr. Sachs, you have previously testified¹ before the recess that the treaty of January 5, 1926, remained operative until February 1936.

Mr. SACHS. Yes.

Mr. NEHEMKIS. Now, on February 6, 1936, did not Lehman Brothers declare the treaty of 1926 without force and effect and no longer binding upon the signatories thereto.

Mr. SACHS. That is correct; they wrote us a letter.

Mr. NEHEMKIS. I show you a letter from Lehman Brothers to Goldman, Sachs dated February 6, 1936, and ask you to tell me whether or not that is a true and correct copy of the original in your possession.

Mr. SACHS. Yes; that is. It is a true copy of a copy of a letter.

Mr. NEHEMKIS. Subject to that correction.

Mr. Hancock, will you examine that letter and tell me whether you recognize that to be a true and correct copy of an original in the files of Lehman Brothers?

Mr. HANCOCK. This is a true and correct copy of a carbon copy in the files of Lehman Brothers. I am sorry to be captious; I hope it didn't appear so.

Mr. NEHEMKIS. I might ask what happened to the original.

Mr. SACHS. We have it.

(The letter referred to was marked "Exhibit No. 1798" and is included in the appendix on p. 12726.)

Mr. NEHEMKIS. Mr. Hancock, was not the reason for Lehman Bros.' abrogation of the treaty the fact that Lehman Bros. regarded Goldman, Sachs had breached the spirit of the terms of the treaty?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. The particular instances of the violation of the terms of the treaty, according to Lehman Bros., were the financing plans of Goldman, Sachs with respect to Brown Shoe Co., National Dairy Products Corporation, and Endicott Johnson Corporation. Is that correct?

Mr. HANCOCK. That is correct, as I recall them.

Mr. NEHEMKIS. Now, I want to read to you, Mr. Hancock, from the letter of February 6, 1936, now in evidence [reading from "Exhibit No. 1798"]:

As of October 26, 1925, and January 5, 1926, you and we agreed to memoranda setting forth a mutual understanding that appeared to both of us equitable and satisfactory. Briefly and generally stated, these memoranda outlined the arrangements as they related to both of us and our equal participation in future financing for a list of corporations. The list embraced those corporations with which our two firms had a relationship over a great many years.

We believe we have proceeded completely in accordance with these memoranda and their spirit. The recent instances of the financing plans for Brown Shoe, National Dairy, and Endicott Johnson indicate clearly that you have not felt bound by your agreement with us, in spite of the fact that no notice has as yet been given us of the termination of the arrangement to which both firms were parties.

In view of the situation, we see no alternative for us but to inform you that inasmuch as the arrangement has not been controlling upon you for some time, we cannot accept any longer any commitments inherent within our written arrangements which we have always assumed as controlling upon us.

Mr. Hancock, just what had Goldman, Sachs proposed in these financing plans which caused Lehman Bros. to accuse Goldman, Sachs of having breached the arrangement?

Mr. HANCOCK. I suppose an unequal division of a new factor in security underwriting called the management fee.

Mr. NEHEMKIS. In other words, Goldman, Sachs wanted to charge a management fee.

Mr. HANCOCK. It was determined——

Mr. NEHEMKIS (interposing). Also, Goldman, Sachs in a number of issues wanted to act as sole manager.

Mr. HANCOCK. Correct.

Mr. NEHEMKIS. Goldman, Sachs wanted the real privilege of handling the syndicate books.

Mr. HANCOCK. Yes.

Mr. NEHEMKIS. And Goldman, Sachs wanted a relatively larger underwriting for themselves. Does that summarize the *casus belli*, shall I say?

Mr. HANCOCK. I think so. They might not all have been pertinent to any one case, but they were the kind of difficulties that were arising in the situation.

Mr. NEHEMKIS. Just like sovereign powers, there is never one specific incident, but a concatenation of events?

Mr. HANCOCK. That is right.

Mr. NEHEMKIS. Lehman Bros. was opposed to the idea of the management fee on the grounds that there was neither principle nor precedent for such a fee in the past relations between the two houses?

Mr. HANCOCK. Right.

ORIGIN OF THE MANAGEMENT FEE

Mr. HENDERSON. Could I ask a question there? This is for my own information. Do you know when the management fee first got into the underwriting?

Mr. HANCOCK. Yes, sir; it came in with the law of 1933, the Securities Act of 1933.

Mr. HENDERSON. There had been management fees charged before that. What I am trying to get is the historical background.

Mr. HANCOCK. No, not quite; it was conceivable that there were, but it was a different kind of situation. I would like to have counsel state the question, and maybe I can explain it in laymen's terms.

That provision came into the law in an effort to safeguard the provision to prevent an underwriting firm with capital from creating a dummy corporation to do the underwriting under which the real corporation, the real firm, would be getting all the profits and the liabilities would be put, under the Securities Act, upon the dummy. The management fee came in as a part of that protective device.

Mr. HENDERSON. I am talking historically. What underwriting house first instituted it? It was before 1933 because last week or the week before last the question of management fee came up in connection with A. T. & T. financing, and Morgan instituted it somewhere in the twenties, 1928, wasn't it? I am wondering, to the best of your knowledge, if it antedated that. Do you recall?

Mr. HANCOCK. I have no doubt there were cases, but it wasn't a general practice.

Mr. NEHEMKIS. In those days, Mr. Hancock, there used to be something that was called by the business "over-writing fee" that occasionally made itself known.

Mr. HANCOCK. Yes.

Mr. NEHEMKIS. But it would perhaps be correct to say that the term as we now use it, "management fee," is perhaps more clearly associated with contemporaneous financing than with financings that took place in an earlier period, and that is largely due to the change in the nature of syndication which has arisen as a result of the 1933 act.

Mr. HANCOCK. That is right.

(Senator King assumed the Chair.)

Mr. NEHEMKIS. It was Goldman, Sachs' position, was it not, Mr. Sachs, that in essence, since the Goldman, Sachs accounts were at that time the only ones which were very active, your firm had the right to charge a management fee for itself and not share this with Lehman Bros.?

Mr. SACHS. Well, our theory of charging a management fee was just this, that under the Securities Act the nature of doing business was changed, the amount of preliminary work that had to be done in connection with being helpful in the preparation of registration, statements, and these long prospectuses and what not, was such that that required a special amount of work that under ordinary instances it was simpler and more effective for one house to do, and therefore we felt that if that work was done it ought to be compensated. My recollection is quite clear that that question of management fee and this question of compensation because of the Securities Act came up first in the instance with Brown Shoe Co. financing that you mentioned, and that was in 1935, and if I might answer Mr. Henderson's question, according to my best recollection the whole question of the management fee had become alive and active just prior to 1935, back in 1934, perhaps early in 1934, I don't remember exactly.

Mr. NEHEMKIS. Mr. Sachs, I should like to show you five letters which I ask you to examine and identify and tell me whether they are true and correct copies of originals. I don't intend to examine you on the contents of those letters, Mr. Sachs, but I want to offer them for the record.

Mr. SACHS. Yes, sir; I recognize them.

Mr. NEHEMKIS. Mr. Chairman, I ask that these letters be admitted in evidence and that they be spread on the records of the committee. Acting Chairman KING. What is the object?

Mr. NEHEMKIS. The relevancy of the letters? They show various discussions that were taking place on the questions that I have put to the witnesses and are the foundation for subsequent testimony that I will elicit and tie up at a later time.

Acting Chairman KING. I suppose they are offered for the purpose of showing the character of business conducted, and the conclusions to be drawn therefrom would be for the committee.

Mr. NEHEMKIS. Correct, sir.

Acting Chairman KING. And you are making no contention that these transactions to which you refer are violations of the Sherman antitrust law or Securities Act?

Mr. NEHEMKIS. Mr. Chairman, you know me better than that. I never make allegations of that sort.

Acting Chairman KING. I just wanted to probe a little and ascertain what the relevancy of this testimony was. Of course, as a mere fishing expedition it is unimportant, but if it has some relation to the transaction—

Mr. NEHEMKIS (interposing). You have my word for it that the evidence will be tied up before this hearing is concluded.

Acting Chairman KING. Proceed. The letters may be received.

(The letters referred to were marked "Exhibit Nos. 1799 to 1803," and are included in the appendix on pp. —.)

Mr. NEHEMKIS. Mr. Sachs, turning to the financing of Endicott-Johnson Corporation, did you not proceed and form a syndicate without Lehman Bros. after they had declined to participate in the underwriting?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. I show you a letter from H. S. Bowers to Mr. George W. Johnson, dated January 31, 1936. Will you tell me whether this is a true and correct copy of an original in your possession?

Mr. SACHS. We have the copy of this letter in our possession; yes. This is a photostat of the copy of the letter that was sent.

Mr. NEHEMKIS. I should like to read the first sentence of the second paragraph of this letter [reading from "Exhibit No. 1804"]:

It is the custom for the house leading such a business privately to sound out by word of mouth important possible underwriters well ahead of the actual signing of the contract.

By "contract" was meant here, I take, the contract between the underwriters and the company?

Mr. SACHS. Yes.

ATTITUDE TOWARD MORGAN STANLEY & CO.

Mr. NEHEMKIS. Now, I continue with that letter:

We therefore approached Morgan, Stanley & Co.—this is the investment security end of J. P. Morgan & Co. . . .

Acting Chairman KING. What is the date of that?

Mr. NEHEMKIS. January 31, 1938. I offer the letter in evidence.

(The letter referred to was marked "Exhibit No. 1804" and is included in the appendix on p. 12729.)

Mr. NEHEMKIS. I should say that Mr. Bowers, in accordance with the previous testimony before this committee, was not alone in that understanding.

Mr. SACHS. I would not, if I may be permitted to say so, take that remark, which was in a conversational letter, too seriously. I don't think Mr. Bowers would write that today. Morgan Stanley had been formed, it was the same name, and in writing to Mr. Johnson in a very informal manner he may have made that remark, and I feel confident he wouldn't say that today.

Mr. HENDERSON. Does that mean you would not say it?

Mr. SACHS. I don't believe it, and I don't believe Mr. Bowers believes it.

Mr. HENDERSON. You don't believe Morgan Stanley is the investment end of the Morgan business?

Mr. SACHS. No, sir; I do not.

Mr. HENDERSON. How about you, Mr. Hancock? Do you want to be heard?

Mr. HANCOCK. I have no desire to be heard.

Acting Chairman KING. They can hardly be called upon as character witnesses as to which is the better of the members of that firm or any other firm.

Mr. HENDERSON. No; but, Mr. Chairman, last week, or the week before, the evidence at this hearing showed that at one time there were certain partners and certain capital in the firm of J. P. Morgan & Co. Following the formation of Morgan Stanley & Co., what seemed to have happened was a division between partners and capital, and running throughout the various items of evidence that the part of people in the same business that Morgan Stanley & Co. is—perhaps not in a legal, contractual relationship—the investment end of the Morgan business.

Mr. SACHS. I think the "Street" felt at the time, and feels today, that certain individuals decided to go into the investment banking business, certain individuals who had been connected with J. P. Morgan, rather than to remain with them, but that the two things were entirely separated. It followed perfectly naturally that some of these individuals had certain personal contacts and were able to build up a business for Morgan Stanley & Co. as members of that organization.

Acting Chairman KING. My observation was directed to the question of whether this committee should determine or ask you to pass upon the qualifications or the moral turpitude of one firm or another.

Mr. SACHS. I have no definite—

Acting Chairman KING (interposing). It wasn't our business to do that.

Mr. HENDERSON. I wasn't asking a moral question. Mr. Sachs and Mr. Hancock are still in the same business of people similarly situated, and partners in other great houses have chosen in their private and public expressions to indicate that, and I was just giving them an opportunity to comment if they wanted to. It is evident Mr. Hancock doesn't want to.

Mr. HANCOCK. I don't want to be dragged into the conversation. I didn't write the letter.

Mr. SACHS. The point I want to make, Mr. Chairman, is this remark in this letter written many years ago was a conversational letter and was not considered a particularly important or well-thought-out remark, nor was it intended to be a statement of fact.

Mr. NEHEMKIS. I think we will assume all of this, Mr. Sachs, and had Mr. Bowers known that in 1939 this letter was to be used for this purpose he wouldn't have written it.

I want to show you a letter dated February 7, 1936, from Goldman, Sachs & Co., to Messrs. Lehman Bros., in reply to the notice of termination of the treaty. Would you be good enough to examine this and identify it for me so I may offer it in evidence?

Mr. SACHS. Mr. Nehemkis, may I make one observation in regard to a letter that was put into the record a little while ago? There was a letter¹ put into the record which I wrote to our manager in St. Louis regarding the Brown Shoe Co. business, in which I said Mr. Horton, who was associated with us, was spending a day or a day and a half in St. Louis. I didn't want to create the impression that that was all the work that was involved in connection with the preparation of registration statements, and so forth, and therefore the earning of the management fee. There was a great deal more than the spending of a day or two in a foreign city.

¹ "Exhibit No. 1801."

Mr. NEHEMKIS. Having once had the pleasure of being an associate of Mr. Horton, I know that is impossible.

Mr. SACHS (examining letter). Yes; this is correct.

Mr. NEHEMKIS. Mr. Chairman, may I offer in evidence the letter identified by the witness?

Acting Chairman KING. You want it printed in the record?

Mr. NEHEMKIS. Yes, sir.

Acting Chairman KING. It may be received.

(The letter referred to was marked "Exhibit No. 1805" and is included in the appendix on p. 12730.)

RELATIONS AFTER THE ABROGATION IN 1936

Mr. NEHEMKIS. Mr. Sachs, did not some of the companies covered by the agreement in 1926 issue securities after the agreement had been abrogated in 1936?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. For example, there were security flotations by Continental Can Co. in 1936 and 1937.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. And by the B. F. Goodrich Co. in 1936.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. And by Sears, Roebuck & Co. in 1937.

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. By Cluett, Peabody in 1937.

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. By General Foods Corporation in 1937.

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. And by R. H. Macy in 1937?

Mr. SACHS. Well, I can't—

Mr. NEHEMKIS (interposing). Mr. Hancock?

Mr. HANCOCK. That is correct.

Mr. NEHEMKIS. Did not Goldman, Sachs manage the issues of Continental Can?

Mr. SACHS. They did.

Mr. NEHEMKIS. Goodrich?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Sears, Roebuck?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. And Cluett, Peabody?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Did not Lehman Bros. manage the issue of R. H. Macy & Co.?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. May I summarize, subject to your correction, the situation with regard to the financing of Continental Can Co.? In the five pieces of financing involving common and preferred stock between 1912 and 1936, Goldman, Sachs and Lehman Bros. shared equally in the leadership and in the public offerings. In May of 1936 Continental Can Co. offered \$10,000,000 of common stock to its stockholders and the offering was underwritten by a syndicate headed by Goldman, Sachs & Co. Goldman, Sachs were managers of this issue, but Lehman Bros. did not have a position as co-managers, is that substantially correct, sir?

Mr. SACHS. You made the statement there was an equal participation in five pieces of business. I don't think that is correct. There was an equal participation in probably the first three, and then subsequently we managed the business and received a management fee.

Mr. NEHEMKIS. On the last two pieces of business?

Mr. SACHS. On the latter two, according to my recollection.

Mr. NEHEMKIS. Mr. Hancock, when Continental Can Corporation issued 20,000,000 of cumulative preferred stock in 1937, did not Lehman Bros. refuse to accept the participation offered by Goldman, Sachs?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. This was because Lehman Bros. had not been offered co-managership and a participation equal to that taken by Goldman, Sachs?

Mr. HANCOCK. Correct, largely that. I wouldn't say that tells the whole story.

Mr. NEHEMKIS. So that for the first time in a quarter of a century of close personal relationship with this company, Lehman Bros. was no longer able to participate in its financing. That is a simple statement.

Mr. HANCOCK. No, your last two or three words—"was no longer able to." We did not participate, I agree. I don't want to get in an argument about the wording.

Mr. NEHEMKIS. I will correct that: so that for the first time in a quarter of a century Lehman Bros. did not participate in that financing.

Mr. HANCOCK. Correct, so far as I know.

Mr. NEHEMKIS. Mr. Hancock, I show you three letters dated September 20, 1937, September 29, 1937, and October 4, 1937, correspondence between yourself and Mr. Huffman, and Mr. Philip Lehman and Mr. Huffman. Will you be good enough to examine these letters and tell me whether they are true and correct copies of originals in your possession?

THE NATIONAL SCOPE OF INVESTMENT BANKING

Acting Chairman KING. While the witness is examining those proposed exhibits, I would like to ask Mr. Sachs a question, whether by and large during the past quarter of a century there have been different houses or corporations or partnerships or organizations to whom persons seeking capital have gone, in Chicago, New York, San Francisco, or other important industrial or financial sections, for the sale of their securities or for the obtaining of capital with which to expand their business activities or to launch new activities?

Mr. SACHS. Certainly; many. I might point out that although (I am sure Mr. Hancock would agree) both Goldman, Sachs & Co. and Lehman Brothers were important banking houses and are important banking houses of large capital, nevertheless their combined capital was only a small part of the underwriting capital available in the country, not only in New York City but in Chicago and Boston and some other centers. Does that answer your question?

Acting Chairman KING. I think so. And if they accepted as a client a man who was trying to obtain finances to launch a mining company in Utah or Nevada or in the West, or a manufacturing

company in St. Louis, they would then have to unload—I don't use that term opprobriously—but they would have to find markets for the securities in various parts of the United States.

Mr. SACHS. They would have to go to—or would go to—some investment banking house whom they knew as people of standing and who were accustomed to make original issues of securities. They were perfectly free, of course, to go to any one of a number of people.

Acting Chairman KING. Those investment houses, whether Lehman or Goldman, Sachs, would open up channels through which they might dispose of securities to various persons throughout the United States who had money to invest in securities or reputable organizations.

Mr. SACHS. Yes, sir; we were essentially merchants of securities; in other words, according to the nature of the particular security that we underwrite, we have the channels, which may be partly through private investors, partly through what are known as investment dealers throughout the country, institutional buyers—we have the channels through whom we can market these securities we originate.

Acting Chairman KING. I have in mind the fact that years ago, when I was a lawyer, I represented an organization that wanted funds with which to develop a property. Funds were not available in the immediate vicinity, and representatives of the corporation came East because it was believed there were in New York or Chicago banking or investment companies who would, through the channels that were open to them, find markets for those securities. Now, has that been the custom for many years for organizations, new organizations, or those which have been in existence for some time and desired to expand their business, to approach these various business houses and banking houses and investment companies for the purpose of obtaining capital with which to prosecute their activities?

Mr. SACHS. Yes, sir; I just believe that in any country there must of necessity be money centers; one, or two, or perhaps three. That is true all over the world; it is the natural place where these investment bankers make their headquarters. If they are to do national business—and we know it to be a fact that while very small pieces of financing may be done locally in some smaller cities, pieces of financing that are of national size, of national importance—they naturally drift to the money centers like Chicago and New York, and that is where the investment banker establishes his main office.

Acting Chairman KING. Have you discovered in your business activities that from various parts of the United States, from the Pacific to the Atlantic, from the Canadian border to the Gulf, persons who would have some surplus funds in remote parts of the United States would send those funds or make them available to the banking and investment houses in Chicago or Denver—I remember in Denver we had an investment company, Rollins & Co., that took many of our securities from Utah—hoping or expecting to obtain from those investment and banking houses funds with which to prosecute their business and find the market for the surplus funds which they who had them desired?

Mr. SACHS. Except the business is done, perhaps, just a little differently. The funds that are available for investment in Denver or Kansas City or Sioux City, or wherever it may be, are made available through the local investment dealer, and the New York or the

Chicago house forms these large selling groups. We sometimes have as many as three or four, perhaps five or six or seven hundred dealers who become members of this selling group and who then sell to their individual customers in their particular territory.

Acting Chairman KING. All parts of the United States?

Mr. SACHS. Yes, sir.

Mr. HENDERSON. I think the last two big issues in the S. E. C. have had anywhere from 60 to 100 different distributors. The last one had upwards of 90, if I recall.

Acting Chairman KING. The point I am trying to make is that—

Mr. SACHS. May I just reply to that? Are you referring, Mr. Henderson, to underwriters?

Mr. HENDERSON. Yes.

Mr. SACHS. I was speaking of underwriters, but underneath that this selling group which is a very much larger group ordinarily.

Mr. HENDERSON. Yes.

Acting Chairman KING. Proceed.

UNDERWRITING GROUP FOR CONTINENTAL CAN CO. FINANCING

Mr. NEHEMKIS. These documents identified by Mr. Hancock are offered.

(The documents referred to were marked "Exhibit Nos. 1806 to 1808" and are included in the appendix on pp. 12730-12732.)

Mr. NEHEMKIS. Mr. Sachs, at the time of the offering of Continental Can's securities to which reference has been made, in 1936 and 1937 was not your partner, Mr. Weinberg, a director of Continental Can Co.?

Mr. SACHS. Yes; he was.

Mr. NEHEMKIS. Among other things Mr. Weinberg was a director of the company by virtue of Goldman, Sachs' long public sponsorship of the issues of that company, was he not?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Now when Mr. Weinberg became a director of Continental Can Co. it was presumably intended that he would take an active interest in the affairs of that company?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. And that his interest would attach to all matters of corporate policy and not merely to matters of prospective financing?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Now shortly before the time this issue was offered do you recall, Mr. Sachs, whether or not Goldman Sachs & Co. was interested in the possible financing by Jones & Laughlin Steel Corporation of an offering which was managed subsequently by the Mellon Securities Corporation?

Mr. SACHS. We were associate underwriters; we were offered a participation as an associate underwriter in that business; yes.

Mr. NEHEMKIS. Mr. Sachs, is it not a fact that Mr. Weinberg used his position as a director of Continental Can Co. to bring pressure on Jones & Laughlin to have Goldman, Sachs included in that financing?

Mr. SACHS. He may very likely have said to Carle Conway, "You know the Jones & Laughlin people, and we will see whether we can't have a participation in that attractive business." I don't recall the exact circumstances, but that may have very likely occurred.

Mr. NEHEMKIS. Mr. Chairman, I should like to offer in evidence a letter from Mr. C. L. Austin, Vice President of the Mellon Securities Corporation, Pittsburgh, Pa., and then when you have admitted it, if you will, may I read from it?

Acting CHAIRMAN KING. Who is Austin?

Mr. NEHEMKIS. Vice President of the Mellon Securities Co.

Acting CHAIRMAN KING. It may be received.

(The document referred to was marked "Exhibit No. 1809" and is included in the appendix on p. 12733.)

Mr. NEHEMKIS. I now read to you, Mr. Sachs, from a diary entry made by Mr. C. L. Austin, dated January 11, 1936.

Mr. SACHS. Who is Mr. Austin?

Mr. NEHEMKIS. Vice President of the Mellon Securities Corporation. He used to be with E. B. Smith.

Mr. SACHS. I know him personally.

Mr. NEHEMKIS [reading from "Exhibit No. 1809"]:

Mr. Hackett spoke to me yesterday about pressure being exerted on them on the part of Continental Can on the inclusion of Goldman, Sachs & Co. Goldman, Sachs & Co. has a director on the Board of Continental Can. Continental Can, of course, is an important customer of Jones and Laughlin.

Now was not Goldman, Sachs included in the Jones & Laughlin 1936 offering of \$30,000,000 4¼s of '61?

Mr. SACHS. Yes, sir.

FINANCING BY GENERAL FOODS CORPORATION, 1938

Mr. NEHEMKIS. On May 4, of 1938, did not General Foods Corporation issue \$15,150,000, \$4.50 cumulative preferred stock?

Mr. SACHS. That is correct.

Mr. NEHEMKIS. During the latter part of 1937 did not Goldman, Sachs discuss possible financing with Mr. C. M. Chester, chairman of the board? Do you recall that?

Mr. SACHS. Yes.

Mr. NEHEMKIS. And had you not requested the managership for the proposed offering?

Mr. SACHS. Oh, yes.

Mr. NEHEMKIS. Mr. Hancock, is it not a fact that Lehman Bros. also wanted the position of co-managership?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. I show you a letter from Mr. Robert Lehman to Mr. C. M. Chester dated December 22, 1937. Be good enough to examine this and tell me whether this is a true and correct copy of an original in your possession?

Mr. HANCOCK. It is.

Mr. NEHEMKIS. This is a letter¹ from Mr. Robert Lehman, whose place Mr. Hancock is taking this afternoon, to Mr. C. M. Chester:

Dear Clare: I want to tell you that I deeply appreciate the very fair way in which you handled the matter we discussed today. As I told you, I feel that the suggestion which you made is thoroughly satisfactory to me and my firm.

¹ Included in the appendix, p. 13014.

In order that there may be no misunderstanding as to what should be considered "an equal basis," I am giving you the following notes which cover the more important points so that you may have them before you.

Your suggestion that G. S. & Co. should handle the business in their office is entirely satisfactory to me, although, of course, I consider that that is a real privilege.

And now Mr. Lehman lists the points as follows:

1. Both firms to share equally in the profits and to take the same commitment. Any step-up to be shared equally by both firms.
2. Both firms to be syndicate managers and both signatures to appear on all syndicate and selling group letters and letters of confirmation.
3. Both names to appear on the same line in all newspaper advertising and any syndicate, selling groups and other letters. Both names to be included on a parity basis in newspaper publicity as jointly heading the business.
4. Syndicate and selling groups to be formed jointly as to who should be included therein.

Now on or about January 27, 1938, Mr. Hancock, did not the board of directors of General Foods Corporation offer to create a joint managership for the proposed security issue?

Mr. HANCOCK. I understood so.

Mr. NEHEMKIS. Mr. Sachs, was not this decision transmitted to Goldman, Sachs and to Lehman Bros. on or about February 1, 1938?

Mr. SACHS. I so understood.

Mr. NEHEMKIS. Do you understand, Mr. Sachs, that you, too, received such a proposal?

Mr. SACHS. Yes, sir.¹

Mr. NEHEMKIS. Now, the board of directors, Mr. Hancock, of General Foods had decided that Goldman, Sachs and Lehman Bros. were to be joint managers, but that either firm might do the actual work without, however, getting a management fee, and furthermore that if neither firm accepted this offer, "then neither of said firms shall be selected as syndicate manager or as joint syndicate manager." Do you recall that?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Now, both firms refused this proposal, did they not, Mr. Sachs?

Mr. SACHS. Well, in the first instance, I think.

Mr. NEHEMKIS. Mr. Hancock, your firm refused that?

Mr. HANCOCK. I don't recall that.

Mr. NEHEMKIS. Suppose you consult with Mr. Gibbs.

Mr. HANCOCK. What was the date on that last one?

Mr. NEHEMKIS. That was February 1, 1938.

Mr. HANCOCK. I will have to verify; my recollection is not clear.²

Mr. NEHEMKIS. Well, we will put it in later. When the issue was finally offered on May 4, 1938, Goldman, Sachs and Lehman Bros. were joint managers with equal participations, were they not?

Mr. SACHS. That is correct.

Mr. NEHEMKIS [to Mr. Hancock]. Is that your understanding, sir?

Mr. HANCOCK. Yes.

Mr. NEHEMKIS. Mr. Sachs, may I now call your attention to certain letters written by Mr. Weinberg to Mr. Chester, chairman of the board of General Foods Corporation, on February 11, 1938. My

¹ See letters, February 1, 1938, C. M. Chester to Robert Lehman and to Goldman, Sachs & Co., appendix, p. 12390.

² Mr. Hancock, under date of February 16, 1940, submitted additional information on this point. See appendix, p. 13009, paragraph numbered 6.

associate will show you these two letters. Be good enough, please, to examine them and tell me whether you recognize them as true and correct copies of original letters in your possession and custody? I believe the legend there carries your firm's name.

Mr. SACHS. Yes; that is correct.

Mr. NEHEMKIS. May I have them, please. These two letters, Mr. Chairman, may it please the committee, are offered in evidence.

- Acting Chairman KING. You desire them inserted in the record?

Mr. NEHEMKIS. If you will; sir.

(The letters referred to were marked "Exhibits Nos. 1810 and 1811" and are included in the appendix on pp. 12733-12734.)

Mr. NEHEMKIS. I want to read, if I may, Mr. Sachs, a paragraph from one of these letters from Mr. Sidney J. Weinberg, your partner, to Mr. Chester [Reading from "Exhibit No. 1810"]:

First, the resolution contemplates that the transaction should be handled by two firms jointly, and this I believe to be fundamentally unsound and inefficient. Under present day conditions, an offering of this kind covers a wide field. There is the negotiation with the company and the determination of the characteristics of the security. There is the registration with the S. E. C., a complex matter. Also, there is the problem of syndication, which calls for expert handling. Experience confirms that this is done best if responsibility and the making of decisions are centered in one firm. The company should be called upon to deal with only one firm in the negotiations; one firm should make the primary and detailed investigation and supervise the preparation of the registration statement and the handling of it with the S. E. C., and one firm can best deal with the intricacies of syndication. The centralization of responsibility is desirable and productive of the best results. If inefficiency and delay, and all the other evils of divided authority and responsibility are to be avoided, joint management must develop into formalism, with one party the real manager; and for many reasons that usually is undesirable.

Now at the time of this financing, Mr. Sachs, was not Mr. Weinberg, a director of General Foods Corporation?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. As a director was he not under a duty to see that the General Foods Corporation made the best possible arrangements with respect to financing?

Mr. SACHS. Yes, sir.

Mr. NEHEMKIS. Now, despite the low opinion held by Mr. Weinberg of joint managerships, Goldman, Sachs accepted a joint managership, did it not?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Therefore did not Goldman, Sachs consent to a method of security flotation which Mr. Weinberg was on record as not being in the best interests of the General Foods Corporation?

Mr. SACHS. Well, my answer to that is perfectly simple, Mr. Nehemkis.

Mr. NEHEMKIS. I will take it any way you want to give it to me, Mr. Sachs.

Mr. SACHS. Mr. Weinberg believed then, and he still believes today, I am sure, as I certainly believe, that the statements made as to efficiency of management are best handled by one firm. In other words, that was our theory then; that is our theory today. In spite of that, in life, as in business, compromises have to be made; General Foods Company apparently didn't—or the officials of the General Foods Co. didn't—agree with that theory. They insisted that the matter be handled in the other way, and it was just a question, there-

fore, of trying to make some division of the work and dividing the fee, and we sometimes do things, even if we don't think they are the best way of doing it, even if there is no alternative, and that was the basis of our whole theory of why we believed the management fee should not be divided and should go to one house.

Now we had to in this instance, on the insistence of the General Foods officials, make that compromise.

Acting Chairman KING. Let me ask a question there, for my own information. Where an investment or banking company underwrites or floats a considerable number of issues, there must come a time, it would seem to me, if they did not have cooperation with or collaboration with other investment or banking houses, they might have obligations which might be a little too great for them and therefore they would seek cooperation or collaboration of organization with some other investment or banking house?

Mr. SACHS. You mean obligations in underwriting?

Acting Chairman KING. In underwriting.

Mr. SACHS. Well, we always are seeking associates in the underwriting; what I was referring to was the actual work undertaken in preparing an issue for the market. Now, all of us maintain large and expensive organizations for conducting just that work. Unfortunately in the last few years those organizations haven't had as much to do as we would like them to have to do; we have, nevertheless, had to maintain them at great expense to ourselves. I think that is true of most investment-banking houses in recent years.

Acting Chairman KING. It has organizations to prepare the necessary papers to present to the S. E. C.?

Mr. SACHS. Yes; and prepare the whole issue—the registration, the prospectuses, the working with lawyers, the preparation of trust indentures, and all the many things that have to be done to prepare an issue for the market. As I say, I can only hope that the day will come, Senator, where we will find ourselves short-handed; that there would be too many burdens of that sort, but I think we would be very quick then—of course quite seriously—to increase our organization in order to handle it.

Acting Chairman KING. But it isn't an uncommon thing—indeed, experience has justified it, has it not—the cooperation of two or three or four investment or banking houses to handle very large issues of corporate securities?

Mr. SACHS. In the way of finding underwriting associates to spread the financial responsibility, and that, of course, was true in all these instances. In all these instances in which we said that we thought the management fee should be given to one house we were ready to associate with ourselves other underwriters, and certainly Messrs. Lehman Brothers had equal underwriting participations with our own. I mean there was no question about that, and that is quite a different thing from the actual working of managing and preparing the issue for sale.

Acting Chairman KING. I didn't refer to the managing and preparing of the issue for sale, but generally the distribution of the securities throughout the United States, or wherever there was a field in which they would absorb those issues.

Mr. SACHS. Certainly; because any conservative house would naturally limit the amount of its underwriting obligation at any one time in accordance with its own capital.

Dr. LUBIN. May I ask a question? This has a little different bearing but I might for my own enlightenment ask this question: Has it always been customary in the industry for one house to compete one against the other for the right to have its name on the first line?

Mr. SACHS. Well, it is the recognized custom that the leader in the business appears either on the first line alone or on the left side of the first line. That is more or less traditional. I can recall, however, if I may just add, that curiously enough back in 1906 and 1907, when we first did this business, it was the leading house who had its name on the right-hand side on the first line, but that custom changed in subsequent years.

Dr. LUBIN. Evidently the movie stars have good precedent for competing one against the other for their names in the footlights.

Mr. NEHEMKIS. In the case of the General Foods Corporation, Mr. Sachs, being a director of the corporation and at the same time a partner in an underwriting firm might have resulted in conflicts of interest, as we have been speaking earlier?

Mr. SACHS. Well, I can't follow you.

Mr. NEHEMKIS. But if there had been any conflict of interest in this situation it would appear, would it not, that Mr. Weinberg resolved them in favor of Goldman, Sachs & Co.?

Mr. SACHS. No; I think the facts show that he was of necessity negotiating at arm's length with General Foods Co. and General Foods Co.'s decision prevailed in the matter. He may have thought that the other course was the wiser course, but they made the decision.

Mr. HENDERSON. Mr. Hancock, may I ask you a question? In this particular piece of financing, did your house ever consider the possibility of competing on terms for business and getting it for yourself?

Mr. HANCOCK. You mean and breaking the partnership agreement, so-called partnership agreement, or treaties referred to? Not as far as I know; not during the life of the agreement.

Mr. HENDERSON. Did you try in this particular case to get the exclusive managership?

Mr. HANCOCK. So far as I know we did not; never intimated it, so far as I know.

Mr. HENDERSON. In other words, you suggested if you couldn't get it on a proper basis you would withdraw?

Mr. HANCOCK. I don't know; that question never arose in that form in the case of General Foods; as far as I recall it did not. It did arise in other cases.

FINANCING BY NATIONAL DAIRY PRODUCTS CORP., 1936

Mr. NEHEMKIS. Which we will come to in a moment.

Mr. Hancock, on or about April 10, 1936, do you recall whether National Dairy Products Corporation floated \$63,000,000 of debentures?

Mr. HANCOCK. Yes, sir; it did.

Mr. NEHEMKIS. Was not Goldman, Sachs the manager of this offering, Mr. Sachs?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Lehman Brothers was not given the joint managership or a position equal to that of Goldman, Sachs?

Mr. SACHS. They did not participate in the management fee, that is correct.¹

Mr. NEHEMKIS. And this was true despite the fact that Lehman Brothers had been associated along with Goldman, Sachs as the company's bankers for over a decade?

Mr. SACHS. Yes; I suppose about 10 years.

Mr. NEHEMKIS. As a matter of fact the two firms were the original bankers responsible for the organization of the company?

Mr. SACHS. Yes.

Mr. NEHEMKIS. Now prior to this offering had not Mr. Lehman been a director of the National Dairy Products Corporation, Mr. Hancock?

Mr. HANCOCK. Yes, sir; he had been a director.

Mr. NEHEMKIS. Did he not resign as a director in February of 1936?

Mr. HANCOCK. I know he resigned; I am ready to accept that date; I have forgotten about the time.

Mr. NEHEMKIS. This was some 3 months prior to the public offering of the company's securities, I believe?

Mr. HANCOCK. I think there was delay on the issue for some reasons I have now forgotten.²

Mr. NEHEMKIS. Now was not the motivating reason for Mr. Lehman's resignation from the board of directors the fact that he believed that Goldman, Sachs had violated the agreement of January 5, 1926?

Mr. HANCOCK. That was one of the reasons stated, yes, sir.

Mr. NEHEMKIS. I show you two letters dated respectively February 18, 1936, and February 21, 1936, which purport to come from the files of Lehman Brothers. Will you be good enough to examine them and tell me whether you recognize them as true copies?

Mr. HANCOCK. That is correct.

Mr. NEHEMKIS. Mr. Chairman, I ask that these be admitted into evidence and spread on the records of the committee.

(The letters referred to were marked "Exhibits No. 1812 and 1813" and are included in the appendix on pp. 12735 and 12736.)

Mr. NEHEMKIS. I now read you, Mr. Hancock, from a letter dated February 18, 1936, by Mr. Robert Lehman to Mr. Thomas H. McInnerney, president of the National Dairy Products Corporation (reading from "Exhibit No. 1812"):

About January 9, 1936, Goldman Sachs & Co. advised us that they had arranged with National Dairy Products Corporation that they should receive an overwriting fee—

¹ Mr. Robert V. Horton, of Goldman, Sachs & Co., subsequently offered supplemental information in regard to this point, to the effect that not only did Lehman Brothers not share in the joint managership nor have a position equal to Goldman, Sachs & Co. in the National Dairy financing of 1936, but they did not have any interest at all in that financing.

² Mr. Arthur H. Dean, of Sullivan & Cromwell, counsel to Mr. Hancock, subsequently informed the committee that the convertible debentures of National Dairy Products Corporation were offered in April, 1936 according to schedule and that there was no delay in the offering.

That is another expression for management fee, is it not?

Mr. HANCOCK. That is right.

Mr. NEHEMKIS (reading further):

of 3% (about \$240,000.) upon the proposed financing, and that we would receive no share in such overwriting fee, but that we would be permitted to participate in the underwriting upon identically the same basis as other investment bankers would be offered participations (except that our name would appear with theirs on the top line of any prospectus and that we would be joint syndicate managers with them). We protested to them that this proposal not only was a clear violation of a written agreement dated January 5, 1926, which existed between Goldman Sachs & Co. and ourselves, but wholly apart from that was an unwarranted attempt to deprive us of the position which we had had over many years as one of the two bankers of the Corporation on a parity with Goldman Sachs & Co.

The agreement provided generally for equal participation, but there was an exception as to National Dairy, in which case my firm was entitled to an interest smaller in amount than Goldman Sachs & Co.'s interest but on the identical basis. In discussing the agreement with Mr. Weinberg on September 13, 1935, Mr. Hancock was told that "the interests will be equal" in any National Dairy financing (though it must be pointed out that this discussion was not embodied in a modification of the agreement, as a general modification was under discussion).

I continue:

We believe that your Corporation will not wish to take the position that the sole question involved is a dispute between Goldman Sachs & Co. and ourselves and a violation by them of their agreement with us, to which National Dairy Products Corporation is not a party.

Now, was not the motivating reason for Mr. Lehman's resignation from the board of directors the fact that he believed that Goldman, Sachs had violated the agreement of January 5, 1926?

Mr. HANCOCK. Yes, sir.

FINANCING BY CLUETT, PEABODY & CO., 1937

Mr. NEHEMKIS. Mr. Hancock, did not a similar situation arise in connection with the proposed financing of \$2,500,000 of common stock in 1937 by Cluett, Peabody & Company? In that case, you recall, Goldman, Sachs won the sole managership.

Mr. HANCOCK. Slightly different set of facts, slightly different conditions, but essentially the same main problem.

Mr. NEHEMKIS. In view of the fact that Lehman Brothers had, along with Goldman, Sachs been instrumental in organizing the company, your firm felt that such treatment wasn't justified?

Mr. Hancock, will you examine a letter which is now shown you from Mr. R. O. Kennedy to Sanford L. Cluett, dated May 19, 1937, and tell me whether you recognize that as having come from your files?

Mr. HANCOCK. Yes, I do; it has some of my own handwriting on the margin.

Mr. NEHEMKIS. I am going to ask you to hold that for a moment because I would like you to explain those notations. First, if I may, Mr. Chairman, I would like to read the letter to the committee. This is a letter, you recall, from Mr. R. O. Kennedy. Who is Mr. Kennedy, by the way?

Mr. HANCOCK. Vice President of Cluett, Peabody.

Mr. NEHEMKIS. Who is Mr. Sanford L. Cluett? Will you identify him?

Mr. HANCOCK. He was a director—I am not sure he was an officer at that time—of Cluett, Peabody Company.

Acting Chairman KING. That is addressed to whom?

Mr. NEHEMKIS. The letter is from Mr. Kennedy to Mr. Sanford Cluett and is dated May 19, 1937.¹

Thank you a lot for telling me about Mr. G. A. Cluett's letter. I can understand exactly Mr. Cluett's reaction. I feel sure that he does not understand the situation, just as we did not in the very beginning.

What did hurt me about his letter, though, was the implication that something is being done that would mar the long record of fair and honorable dealings. As you know, the Board faced a situation that was not only embarrassing, but most upsetting. Naturally our inclination was to have both of these houses work together as they always have. We have always felt very close to each one, and particularly so to the representatives on our Board. But there has grown up between the two houses an antagonism that we simply could not break through. As you know, I had dinner twice with Mr. Hancock and met with Sidney—

Mr. Sidney Weinberg?

Mr. SACHS. That is right.

Mr. NEHEMKIS (reading further):

two or three times. We told them how we felt, what we wanted, but we just could not get it. Goldman, Sachs just would not work with Lehman Brothers, for reasons which to them seemed sound, although to an outsider may seem just a little childish, and Mr. Weinberg admitted that they might be so.

The feeling is so intense, however, that in all recent financing they have not shared, even though it be for companies in which they are both represented.

Sears, Roebuck would not have Lehman Brothers. National Dairy gave all of the work to Goldman, Sachs. Endicott-Johnson had Goldman, Sachs do it alone. Continental Can was recently refinanced with Goldman, Sachs cooperation.

We pleaded and put all the pressure we could, requesting that they overlook their differences, but those differences were too fundamental and we could do nothing about it. As late as last Friday night, Mr. Weinberg said he would think it over again and see if they could not make an exception. As you know, he has already offered Lehman Brothers full participation as to the amount that each is to have, but he called me up yesterday and said that he could not consent to go along with Lehman Brothers' name appearing along with theirs.

Mr. Weinberg did suggest that we drop Goldman, Sachs altogether and give it all to Lehman Brothers. He promised he would do everything he could to help if we did. Lehman Brothers gave us no such assurance and have not today. Lehman Brothers feel that Goldman, Sachs have taken the position that they would have it all or would not play. That is not the case, whereas I do believe that Lehman Brothers up to now are taking the position that they will not go along if not offered all that they want—half of the participation and the prestige of being a joint principal.

As you know, the Board felt that Goldman, Sachs were in a position to do a better job in this particular instance than Lehman Brothers could alone. We have been supported in this by the examples of other companies who have had similar work to do. Also it is true that Lehman Brothers have been helpful to us, but it is quite as true that Goldman, Sachs have. Goldman, Sachs' interest has been a warm and very cordial one during the last few years, and particularly during the dark years of 1932 and 1933, where, on the other hand, I have an impression that Lehman Brothers were willing to drop us altogether back in 1932 and 1933.

It is most unfortunate that this has happened. I know that it has bothered Mr. Palmer, as it has bothered all of us, all out of proportion to its importance. But what can we do? Goldman, Sachs will give Lehman Brothers much of which they ask, but will not accept their name as cooperator. No one could have tried harder to bring about the cooperation than have we. If Mr. G. A. Cluett would talk to Mr. Weinberg for just a few minutes, I am sure he

¹ Included in Appendix, p. 13015.

would appreciate that our situation is a difficult one, and that our decision has not been an altogether unwise or unfair one.

Acting Chairman KING [to Mr. Nehemkis]. That controversy seems to have been as to which would be the prima donna, but that didn't compel Cluett, Peabody to accept either as prima donna, they could go some other place if they desired.

Mr. NEHEMKIS. I suppose so. As a result of further discussions with the Cluett people, Mr. Hancock, was it not generally understood that the financing would be handled on a basis of equality between Goldman, Sachs and Lehman Brothers?

Mr. HANCOCK. There was at one time, but there was confusion of thinking.

Mr. NEHEMKIS. But the board of directors subsequently altered that decision, did they not?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. I show you a letter from yourself to Mr. Palmer dated May 18, 1937. Will you be good enough to examine this letter and tell me whether you recognize it as a true copy of an original in your possession and custody?

Acting Chairman KING. Apparently there was some disagreement between these two companies. What effect would that disagreement have upon the ethical, the moral, or the legal status?

Mr. HENDERSON. I think that the chairman asks a very pertinent question. This testimony shows a long line of joint managership, a rather unusual one, I think, in the history of American financing.

Acting Chairman KING. Based upon the friendship between Philip Lehman and the founder of Goldman Sachs.

Mr. HENDERSON. Philip Lehman and others, and shows an introduction of new conditions and new concepts. While it may be personally painful for some of these expressions and these conversations to be brought forth, I think there is nothing more revealing than the explicit and implicit connotations of some of these letters. Certainly if you studied the whole prospectuses that come to S. E. C. you would never get really to understand what is going on in this kind of group financing. I think it is very germane to have these introduced.

Acting Chairman KING. I express no opinion as to whether it is relevant or germane. It only shows that human nature exists among bankers and among investment people as well as among lawyers and representatives of this committee. We differ in our views and our concepts in various policies and I can understand that business people disagree.

Mr. HENDERSON. If it served no purpose other than showing that bankers are human it is very pertinent. [Laughter.] I think ours will stand out as one congressional inquiry that undertook to show that.

Acting Chairman KING. Well, I discovered they were human when I tried to borrow money. [Laughter.]

Mr. NEHEMKIS. I offer these three letters.

Acting Chairman KING. They may be received.

(The letters referred to were marked respectively "Exhibits Nos. 1814, 1815 and 1816" and are included in the appendix on pp. 12736-12739.)

Mr. NEHEMKIS. One of the letters which you have just been good enough to identify is a copy of a letter to Mr. Sanford L. Cluett from his father, G. A. Cluett.

Mr. HANCOCK. Not his father.

Mr. NEHEMKIS. Who is Mr. G. A. Cluett?

Mr. HANCOCK. A cousin, I believe.

Mr. NEHEMKIS. Who had at the time been retired from the business?

Mr. HANCOCK. Yes—son of the original owner, I believe, and retired.

Mr. NEHEMKIS [reading from "Exhibit No. 1815"]:

I hesitated for some time the other day before calling you on the telephone regarding the proposed new financing and I did so finally only because Mr. John Hancock of Lehman Brothers had urged me to do so. Since my retirement from business some ten years ago, I have endeavored scrupulously to avoid offering advice or making suggestions to those who are now directing the affairs of the company. In this particular instance, I thought best to call you, as it often happens that the active directors of a company are not familiar with arrangements or commitments entered into by their predecessors.

I call your attention, Mr. Chairman, to the next paragraph particularly:

At the time the present company was organized through the joint efforts of Lehman Brothers and Goldman, Sachs and Co., a representative of each banking firm was elected to the board. It was clearly understood at the time that each firm would have a voice in the financial affairs of the company and that any new financing that the company might be called upon to do in the future would be handled by both firms.

Mr. HENDERSON. Mr. Nehemkis, did you say that this firm was organized jointly?

Mr. NEHEMKIS. By both of the houses.

Mr. HENDERSON. Mr. Hancock, is that correct?

Mr. HANCOCK. He used an unfortunate word when he said "organized." I think he referred only to the sale of the securities.

Mr. NEHEMKIS. To use banking language, Lehman Brothers and Goldman, Sachs sponsored the first issue of Cluett, Peabody.

Mr. HANCOCK. There might have been a change of name at that time and therefore a new incorporation.

Mr. NEHEMKIS. In connection with another letter which you were good enough to identify for me and which is now in evidence, Mr. Hancock, I want to read this to you, if I may. This, you will recall, is a letter which you wrote to Mr. C. R. Palmer.

Mr. HANCOCK. President of the company.

Mr. NEHEMKIS. This letter which I just read, Senator, was from the first president, who had been retired for some years. This is Mr. Hancock now writing to the present president [reading from "Exhibit No. 1814"]:

If the board at its last meeting did carefully consider and decide that the stock split-up and offering of rights was best, then it should have considered its relations to its bankers and how best to use them for Cluett's benefit.

After three men, you, G. A. Cluett, and E. H. Cluett, all separately told me that none knew a reason why the financing should not be handled on a basis of equality of the two banking firms represented on the board, and after R. O. told me on Tuesday afternoon that the board would drop the financing unless it were so worked out, and after Green and I both advised that there was no interference to the company plans in a week's delay in which this equal basis could be agreed upon, I was confronted on Wednesday, May 12, with a state-

ment that the board had changed its mind and had decided to go ahead on its original plan which subordinated us to the other firm.

I am ready to accept the opinion of the Cluett board as to what is best for Cluett in connection with its relations with bankers, if the facts are examined before a decision is reached. In this case I doubt that the facts were looked into, and sometime I want you to learn more about them.

In the course of the discussions some matters have arisen which I think are worth further consideration so I am going to present one. R. O. referred to the fact that our difference with Goldman Sachs put Cluett in a squeeze. I told him that I was sorry Cluett was in that position but that I had not put it there, but rather Cluett had put itself there by not consulting with me or the board at an early date and before it made any commitment to Goldman Sachs. I think you will find R. O. agrees with my position on this. I did not say to him at the time but it is obvious that Goldman Sachs is using Cluett in its dispute with us. It is also obvious that Cluett chose to squeeze me and be itself squeezed by submitting to an unfair demand rather than squeeze the man making the unfair demand. If he threatened to resign in case Cluett did not give him undisputed leadership in its financing, did he not control the Cluett financing by the threat which the Board undoubtedly felt would, if carried out, harm the company. After the Board took its position Tuesday and when it reversed its position Wednesday in the face of that threat, Cluett surrendered its judgment to a man who was willing to harm Cluett for his own purposes. Instead of threatening to resign as I too might have done, I made no demands and it now seems that I get the rough end of the stick because I was reasonable in my request for an equal position. The man who would not work on this basis does not claim to me that my suggestion of a fair plan was not fair. He only asserts that he owes no consideration to Lehman Bros. and that he will not do what I proposed. If my suggestion was not fair, in fact, then he should object to it on that ground. I did not feel that I was asking him to do me or my firm a favor. I felt I was asking him to do what Cluett wanted done.

Mr. Hancock, who is this mysterious "he" and "him" referred to in your letter?

Mr. HANCOCK. The only one that I recall is Mr. Weinberg.

Mr. NEHEMKIS (reading further from "Exhibit No. 1814") :

I have been given no reason and I know of none why my position is not fair. The net fact is that one man will not accept my suggestion, regardless of its fairness, and he governs the action of the Cluett Board. When the Board reversed its former position and accepted his demand, it made a decision in effect that my suggestion was not in the best interest of Cluett to accept. It may have concluded that my suggestion was not a fair one. I do not accept either conclusion as sound or soundly arrived at.

Now, as to the purely personal aspects of the situation, it was personally embarrassing to be left out of the discussions, but that is a very minor point. The main point is whether the action taken by Cluett is wise and sound and in Cluett's best interests.

Acting Chairman KING. From this letter it appears there is some controversy between your company and Goldman, Sachs, and you complained because Cluett didn't accept your view, and you blame, as I understand your letter, Weinberg for insinuating himself too much into the activities of the control of Cluett Bros. and to the disadvantage of your company.

Mr. HANCOCK. That is a partial summary; insofar as it goes, it is accurate; it isn't the whole story.

Acting Chairman KING. You are complaining because Cluett Co. didn't avail themselves of your organization to facilitate the disposition of their funds, of their issue.

Mr. HANCOCK. In the first place, they didn't discuss the matter until after the issue had arisen. They had made a decision without discussion.

Acting Chairman KING. Didn't they have the right to do that?

Mr. HANCOCK. I think a legal right; yes.

Mr. HENDERSON. Were you on the board at the time?

Mr. HANCOCK. Yes, sir.

Mr. HENDERSON. But you were not present at any discussions of the board?

Mr. HANCOCK. No, sir.

Mr. HENDERSON. And was it the board, the management, that made the decision?

Mr. HANCOCK. I think, from information I have gathered since, that the management in the form of an executive committee made the decision.

Mr. HENDERSON. And from that statement you understood that the board would drop the financing if it could not be arranged for a joint managership?

Mr. HANCOCK. Came to me from a vice president and the president of the company at the time.

Mr. HENDERSON. Well, now, as I understand, to go further, you said that Senator King gave a partial summary. Included would be two other things that you were relying on. One was this understanding that had been reduced to a pretty clear agreement, and the other was mentioned not in your letter, but in another which has been read into the record,¹ that it was clearly understood at the time the company was organized that Sachs and Lehman were to have membership on the board, and they were very clearly to have quite a bit to say about the financing. Were you relying on the letter, also?

Mr. HANCOCK. I didn't know of Mr. Cluett's statement at that time, and so far as I know, there was no such agreement. The traditional practice of the firm had been that they would ask for representation on the board for 1 year, or the shortest term for which directors were elected, and then during that year the management or control was satisfied with the representative of our firm, or they were not. If they were satisfied, they continued; if they were not, they were dropped.

Mr. HENDERSON. You are putting your complaint mainly, then, on the agreement and on the lack of consideration of the financing on its merits.

Mr. HANCOCK. And the fact that I had worked on that board for a longer time than Mr. Weinberg had, and had done as much work, I thought, as he had done. Opinions in that might naturally differ.

Acting Chairman KING. There is no question as to the right, the legal right of the Cluett board to give greater consideration to Goldman, Sachs than to your organization.

Mr. HANCOCK. None whatever, sir.

Acting Chairman KING. And there was no legal agreement which would compel Cluett Co. to accept your organization as an underwriter or as a coequal partner, if that is the proper term, with Sachs Bros. in handling their securities.

Mr. HANCOCK. Not so far as I know, sir.

Acting Chairman KING. You just felt there was a breach of contract, a breach of understanding the terms of which—

Mr. HANCOCK (interposing). A breach of precedent, too, over the years.

¹ "Exhibit No. 1815."

Acting Chairman KING. But there was no agreement under the ten as of which that precedent was to be perpetuated indefinitely.

Mr. HANCOCK. That is correct.

Mr. O'CONNELL. Mr. Hancock, as I understood that letter, though, there apparently was some question in your mind as to the propriety of Mr. Weinberg, as a member of the board of directors of Cluett, Peabody, in taking the position he did as regards that financing. Did you not have in your mind the fact that Mr. Weinberg was in a dual position in that he was a member of the board of directors of Cluett, Peabody and also a member of the banking firm interested in the financing of Cluett, Peabody?

Mr. HANCOCK. I don't recall that I did. I would assume in that case, as in every case where I am working—I assume Mr. Weinberg would be governed by the same ethics and standards—that he would not have taken part in any decision. I have no reason to assume he did.

Mr. HENDERSON. You did say, however, if I recall, that he was using the Cluett case in the fight with you and putting the squeeze on you.

Mr. HANCOCK. That is right.

Mr. HENDERSON. You did raise a question of propriety in that, did you not?

Mr. HANCOCK. I wasn't raising the question of propriety as affecting any counter interests of him as a director against him as a member of the firm of Goldman, Sachs.

Mr. HENDERSON. But it would be very clear in your mind, would it not, that there would be a conflict?

Mr. O'CONNELL. There is one portion of that letter that I would like to have reread that would illustrate the point I had in mind.

ROLE OF DIRECTORS WHO ARE INVESTMENT BANKERS

Acting Chairman KING. The primary obligation of Mr. Weinberg would be, would it not, to Cluett Co. rather than to Goldman, Sachs, the same as if you had been on that board; your primary interest, duty, would be to serve the Cluett Co. rather than to serve Lehman Bros.?

Mr. HANCOCK. I wouldn't take a position in an individual transaction where I was on the two sides.

Mr. NEHEMKIS. You mean to say you would not vote or participate?

Mr. HANCOCK. I would not participate in any discussions.

Mr. NEHEMKIS. Is that a fixed policy of the House of Lehman, for directors to adhere to that position?

Mr. HANCOCK. I can't govern other partners; I know it is a fixed policy on my part.

Mr. NEHEMKIS. You are speaking, then, for Mr. John Hancock.

Mr. HANCOCK. I believe it is true for every other partner, but I can't vouch for it.

Mr. NEHEMKIS. Would you say, Mr. Sachs, that was the policy of the House of Goldman, Sachs, that partners who serve as directors never participate in discussions of financing matters on the boards of which they serve on the part of Goldman, Sachs?

Mr. SACHS. It seems to me that is absolutely a, b, c.

Mr. NEHEMKIS. Are you sure about that? You are testifying, now.

Mr. SACHS. Yes; I understand. Certainly I should think that when the decision came as to the accepting of terms of a proposal a banking firm made that the director or partner of that banking firm who was a director would be absent himself, or would not vote on that actual decision.

Mr. NEHEMKIS. You mean he leaves the room?

Mr. SACHS. In many instances; yes. In some of these very discussions he wasn't there, he didn't come to the board of directors' meeting.

Acting Chairman KING. It seems to me, even under the highest form of ethics that if you or Mr. Hancock were a director in Cluett Co. and a bond issue were necessary, and funds were to be secured, I can't see any impropriety in his participating with the board in discussing as to the best means of obtaining the funds at the lowest price or the best price in the interest of the company, but if a controversy arose as between determining what organization should be the vendor of the securities and the underwriter of the securities, then another question would arise, but it would seem to me that it would be his duty as a director, notwithstanding his affiliation with Lehman Bros., if he were on the board to give his best judgment as to what would be the best interest of Cluett Co., and what course should be pursued in order that the company might reap the highest rewards and the best terms in the disposition of the security.

Mr. HANCOCK. Clearly so, Senator; no question.

Mr. SACHS. He would do that in the discussions that led to the final proposal, the fact that he made a proposal to purchase such and such securities he would participate in those discussions.

Acting Chairman KING. He wouldn't be muzzled in discussing the question of issuing securities in the best interest of the company.

Mr. O'CONNELL. May I read to you from your letter? [Reading from "Exhibit No. 1814"]:

If he threatened to resign in case Cluett did not give him undisputed leadership in its financing, did he not control the Cluett financing by the threat which the Board undoubtedly felt would, if carried out, harm the company. After the Board took its position Tuesday and when it reversed its position Wednesday in the face of that threat, Cluett surrendered its judgment to a man who was willing to harm Cluett for his own purposes.¹

Reading that in connection with your testimony, is it not fair for me to assume that this conduct described here is conduct which you have indicated you would not think proper for a member of the board of directors of your company?

Mr. HANCOCK. You have forgotten the first word. I said "If" he did so-and-so.

Mr. O'CONNELL. Did you understand he did not?

Mr. HANCOCK. I have been told he did not.

Mr. O'CONNELL. At the time you wrote this letter, did you know that he had?

Mr. HANCOCK. I did understand at that time he had.

Mr. O'CONNELL. If these facts, as stated, are correct, it indicates a course of conduct on the part of a director which you would not think proper?

Mr. HANCOCK. Correct.

¹ For additional information on this point, see letter of January 22, 1940, from Arthur H. Dean to Peter R. Nehemkis, Jr., enclosing letter of May 25, 1937, from C. R. Palmer, president, Cluett, Peabody & Co. to John M. Hancock, appendix, p. 13012.

Mr. HENDERSON. Mr. Sachs, an underwriting contract is a contract to purchase an issue, is it not?

Mr. SACHS. Yes.

Mr. HENDERSON. An underwriter buys an issue from the issuer. Now, in the negotiations leading up to the dealing with the underwriter, a man who is on the board of directors of the issuer and is a partner in the banking house does have a very serious conflict, does he not?

Mr. SACHS. Well, in a sense I can see what you mean, that he is a buyer as a member of the banking house and a seller as a director of the company; yes, sir.

Mr. HENDERSON. He does have a distinct conflict of interests there?

Mr. SACHS. I know of no relationship in life or in business in which occasionally conflicts of interest don't arise. I know that subject has been up many times. You just can't go through life, certainly not through business life, without occasional conflicts of interest.

Mr. HENDERSON. I agree with you there. We occasionally have them in government. We have conflicts, but this type of conflict I am instancing here is bound to arise, is it not, every time there is a question of financing when a member of an underwriting house is on the board?

COMPETITION WITH MARKET CONDITIONS

Mr. SACHS. Except for this, and I think this is as good a place, if I may be permitted to say it, as any, that in these dealings with companies for the purpose of buying and then marketing the securities, we are always in competition with market conditions. We couldn't attempt for a moment to buy an issue of securities from Cluett Peabody & Co. or Sears, Roebuck & Co., or any other industrial or mercantile concern without being faced with the problem that if we don't make the proper price in accordance with market conditions, that that company won't accept it and that they have got a dozen or 25 other investment banking houses who will make the proper price. In other words, do all the discussion about competitive bidding that you like, these relationships that we are talking of have always got the competition of the market, and I have, if I may be permitted to say so, followed these hearings before the committee for the last week or two, and I haven't seen that point properly brought out. In 25 years of experience, I find that we are continually, even though we have done business with Sears, Roebuck & Co. for 25 years, in competition with the market.

Mr. NEHEMKIS. Mr. Commissioner, would you permit me to break in for a moment?

Mr. HENDERSON. Yes, sir.

Mr. NEHEMKIS. Mr. Sachs, I think it is probably fair for me to say that during the numerous weeks that we have plagued you, you have turned over everything in your files, have you not, to us?

Mr. SACHS. As far as we have been requested.

Mr. NEHEMKIS. And I think it is also fair to say, Mr. Hancock, that your firm, too, has very graciously given us full data and information of everything in your files pertaining to this treaty that we have been discussing today. Is that correct?

Mr. HANCOCK. It is correct, so far as I know; it was certainly our intention.

Mr. NEHEMKIS. We lived there for many weeks. Now, I am literally amazed—I have studied this correspondence with great care—that I find nowhere in any of this correspondence anything that bears out the statement that you just made, Mr. Sachs, that your respective firms were at any time concerned with competition from any other house with reference to the 60 corporations covered by the appendix to the agreement.

Mr. SACHS. I can answer that very simply, that the memoranda in our files, or the letters, are just a fraction of what goes on in the discussions or in the placing of an issue. In other words, nine-tenths of it, or 99 percent is done by word-of-mouth discussion, and in these discussions, certainly in any of the negotiations that I have had to do with in the last twenty-odd years of experience, questions have always come up of price, conditions underlying the issues, and what others would do. We are constantly meeting the competition of the market. That hasn't found its way, it is quite true, into the files because into the files come your final documents of agreement, your final contracts, and so forth. But we have days and weeks and months of discussion before we make an issue.

Acting Chairman KING. Let me ask a question there. Did you consider that those corporations or companies that have been referred to were bound hook, line, and sinker to take their securities, or rather to have you, or Lehman Bros., handle all their securities?

Mr. SACHS. Most certainly not. I stated earlier in the day that there was never any contractual arrangement, any contract or contractual arrangement between these companies and ourselves, and I presume I can speak for Lehman Bros. when I say that.

Acting Chairman KING. Is that your understanding, Mr. Hancock?

Mr. HANCOCK. That is my understanding.

Acting Chairman KING. Then each of those companies had a right to seek underwriters or investment houses for the purpose of handling their securities as they pleased.

Mr. SACHS. Exactly.

Mr. HANCOCK. Right.

Acting Chairman KING. And was there competition in the markets? Did you encounter prospective or active competition from other investment or banking houses for the securities or underwritings of issues of these?

Mr. SACHS. There were sometimes threat of competition on price, because time and again those questions came up. We sometimes had verbal agreements with companies that we thought such-and-such would be the price, but if market conditions improved between the time that we were having our preliminary discussions and the final period of issue, we would give that company the benefit of price simply because our spread, so-called, was to be so-and-so much and not more.

May I enlarge on one other thing?

Acting Chairman KING. Proceed.

Mr. SACHS. My associate reminds me of it. In connection with this Brown Shoe issue, we bought \$4,000,000 of 3¾-percent bonds. The first I knew that the Brown Shoe Co., which company I was a director of, was contemplating any business was that I received a letter from them one day saying that they had received an offer from a certain investment banking house in St. Louis, such-and-such an offer, and

as an active and energetic banker, the first thing I did was to jump on the very next train and go to St. Louis. I certainly had competition to get that business in that particular instance. I got the business; and probably would have gotten it because of the past, I will say frankly; on equal terms I probably would have been given the preference, but I certainly wouldn't have been the preference on unequal terms.

Mr. HENDERSON. Leaving out any discussion of competition, Mr. Sachs—I can clearly see you and I would have quite a violent disagreement as to where competition actually takes place—if I thought that over that period of years in those 60 firms any large part of business actually passed on competition, I would feel more sympathetic to your present sentiments.

But, getting away from that, was Mr. G. A. Cluett the first president of the Cluett Peabody Co.?

Mr. SACHS. I think not.

Mr. HANCOCK. An interim president, after the original organization and before Palmer went in.

Mr. HENDERSON. He says in that letter of May 13, 1937, to Sanford Cluett [reading from "Exhibit No. 1815"]:

it was clearly understood at the time each firm would have a voice in the financial affairs of the company and any new financing that the company might be called upon to do in the future would be handled by both firms.

Mr. SACHS. All right; that was their general intention, but there was no obligation on their part.

Mr. HENDERSON. You mean no legal obligation?

Mr. SACHS. Certainly not; and if we hadn't proved satisfactory as investment bankers and a satisfactory relationship they would have immediately gone elsewhere. Any businessman would have done that. We maintained our relationship simply by reason of the fact that we gave good and efficient service, and we couldn't have maintained it for one moment—Goldman, Sachs & Co. have had clients in other departments of their business for 50 or 60 years, and they couldn't maintain those relationships if they didn't perform service.

Mr. HENDERSON. I am prepared to accept that.

CONFLICTS OF INTEREST

Mr. HENDERSON. I go on to this question of the conflicts of interest With this situation here, partially foreclosed, shall we say, doesn't a director have a difficult job in connection with any new financing?

Mr. SACHS. I am sorry to disagree. I don't want to be controversial.

Mr. HENDERSON. I see no reason why you shouldn't be controversial. This is an arena of controversy here.

Acting Chairman KING. We are not presumed to be judges.

Mr. SACHS. I consider that the investment-banking business is a profession of the highest professional type. It has high standards; it takes long experience; it takes a lot of qualities that we hope some of us have. Now, I don't think due consideration is given to that, and I think that where investment bankers have attained a high position in their profession that that is recognized by their clients, just as if we have an attorney—we have no contract with him; there are lots of other good attorneys; but we go back to the man whom we know and

the man that knows us; the same thing is true in the investment-banking business.

Acting Chairman KING. The attorneys do not have a partner on your board?

Mr. SACHS. Attorneys sometimes are on boards.

Mr. HENDERSON. We are seeking an analogue here that he has used himself, Mr. Chairman. A legal firm would have to have a partner on the board of Goldman, Sachs. I am just pointing out—is Mr. Dean [of Sullivan and Cromwell] on your board?

Mr. SACHS. No.

Mr. HANCOCK. But, Mr. Dean has partners on the boards of industrial companies.

Mr. HENDERSON. Of what?

Mr. HANCOCK. It has been true at some time

Mr. HENDERSON. Oh, the partners.

Mr. HANCOCK. On the boards of industrial companies for which his firm is general counsel.

Mr. NEHEMKIS. That would create in itself a conflict of interest, but that is another field of discourse.

Mr. MILLER. Is Mr. Dean counsel for both of your firms?

Mr. SACHS. He is.

Mr. HANCOCK. At times.

Mr. SACHS. I think we should modify that by saying usually the firm of Sullivan and Cromwell are counsel for both firms; different partners in those firms usually represent our two banking houses.

Mr. LUBIN. Mr. Sachs, how many members were there on the board of Cluett Co.?

Mr. HANCOCK. Thirteen or fourteen. I would like to make just one point clear, that you may have overlooked, and I am presuming you can straighten it out quickly. How does this question of relationship or counter-interest arise? The first time a piece of business is done? The first time that Cluett, Peabody, came to Goldman, Sachs and Lehman Bros., isn't it a fair assumption that at that time, having an important piece of financing to be done, that they had satisfied themselves and that these two firms could probably, in their opinion at least, do the best job that could be done in this country at that time.

Mr. HENDERSON. I will accept that.

Mr. LUBIN. I don't think anybody would deny that fact, but does that necessarily mean that if they shopped around in an open market that they may not have found somebody who could have done it still better than you two?

Mr. HANCOCK. No; I wouldn't say it necessarily meant that, no; but it meant an independent judgment by men certainly at arm's length at that stage of the transaction.

COMPETITIVE BIDDING

Mr. LUBIN. I think that raises the whole question of responsibility of management, if a corporation where the stock is owned by stockholders spread throughout the country, whether or not a group of that sort doesn't have a moral, if not legal, responsibility to see to it that they are sure after actual competitive bidding that they are getting the best returns for their stockholders and their organization that it is possible to be gotten.

Mr. HANCOCK. If I may comment, that question splits itself in two. These cases we are talking about were not that kind of case. In the first place, they were industrial companies, where the sale was made on the whole by the largest stockholder. They were not made by a management owning no stock. That is the first differentiation on that. So there was found to be actual arm's-length transaction.

Now, I can readily conceive that as of any minute someone might get a better price for the sale of a security, but that isn't going to mean that necessarily over the years it is the best thing to have gotten a higher price merely because it could have been gotten at the moment.

Acting Chairman KING. Might have gotten a higher price on one issue and on the next got a much lower price?

Mr. HANCOCK. Yes; or if a large holder of securities wants to deaden public interest in securities by design, the most effective way would be to try to sell them at too high a price, so that the people who buy it the first time lost their money in part, and the public will be chilled in that security for years and years ahead.

Mr. HENDERSON. Getting past this initial financing, at which time the issuer accepts the conditions of the underwriter or member of the board for a year and in succeeding years for new financing, those conditions are not present and there is bound to be a conflict of interest, is there not?

Mr. HANCOCK. There has to be; but it can relate to a very minor point. It can relate only to the amount of the spread which the banker may accept as gross profit. Let me make an illustration. Suppose a security was bought at a hundred and sold at a hundred and two. The outside interest of the banker is two points. Now, if by competitive bidding we forced the banker to purchase the security from the issuer at 101, and if the two points spread was fair value for the services rendered by the banker, the result would be a price to the public of 103.

Now, who is wise enough to say what is wise or right at that moment?

Mr. HENDERSON. I will tell you what I think could have been the wisdom there that could be well trusted; that is the competitive market, and that is the thing on which America over a long period has relied. Once there has been a determination in a free and open and competitive market, people are willing to lay aside any kinds of doubts as to whether or not it is the fairest price. The fairest price in that situation, Mr. Hancock, to re-cite, might have been 97, and people would have been willing to accept that as being entirely free from any doubts.

Mr. HANCOCK. Would they buy a large block of securities at that same price? Let's take a concrete case.

Mr. HENDERSON. I am taking a market for the full amount of the issue.

Mr. HANCOCK. That market doesn't exist.

Mr. NEHEMKIS. Mr. Commissioner, you may perhaps have overlooked at the moment that Mr. Hancock's firm has contradicted everything he has been saying, because they purchased by competitive bids the last successful offering of the Cincinnati Union Terminal Co.

Mr. HANCOCK. No; we didn't; we purchased the security.

Mr. NEHEMKIS. You were the leader of the syndicate.

Mr. HANCOCK. Your fact is correct but your conclusion isn't.¹

Mr. NEHEMKIS. Perhaps there is room for a difference of opinion.

Mr. HENDERSON. There is a conflict of interest, you say, but it is a minor matter.

Mr. HANCOCK. There is a possible conflict, I will agree, and it could be a cause of difficulty, unless you have men who are going to handle it in a fair, honest way.

Acting Chairman KING. In your opinion, Mr. Hancock, with respect to those companies referred to in this memorandum which has been produced, if all of those issues, whether they were original or renewals, or what not, had been offered at public auction, in your opinion would the results to the company have been better than those which attended the disposition of those securities?

Mr. HANCOCK. I don't think over the long time they would have been. There might have been differences at the moment in small measure for a short time.

Acting Chairman KING. When you are auctioning off a large issue you must underwrite it, and would there not be difficulties in finding companies who would bid on it?

Mr. HANCOCK. It has been so found.

Mr. SACHS. I may interject the observation that we are talking, I think, or thinking a good deal about times like the present which are what we know as seller's markets. There have been times when it has been very difficult to place securities, and where bankers who have had a continuing relationship with a company have had to put their shoulder to the wheel and take great financial responsibility in order to tide over a company over a difficult situation.

Now, if you have competitive bidding, there will be nobody that will feel any responsibility for these companies that are being financed, and then you will see the difficulties and the losses that will come to security holders and to stockholders. I think we must take a long point of view instead of a short point of view.

Acting Chairman KING. Have there not been losses by underwriters, especially where there was a very large issue?

Mr. SACHS. Yes, sir. In 1937 there were two very notable cases, one of a very prominent oil company and one of a steel company.

Acting Chairman KING. I think we all familiar with the fact that in many instances the banks or investment companies, to use your expression, have put their shoulders to the wheel, and to strengthen the market have sustained great losses in underwriting business.

Mr. NEHEMKIS. You have testified earlier that you believe that your fellow partners when they served on boards of corporations did not participate in discussions or in the voting of matters pertaining to the underwriting agreements or the terms, and so on.

Mr. SACHS. They didn't participate in, I should say, the final vote.

Mr. NEHEMKIS. Presumably when a partner of your firm—and this would be true of Lehman Bros. as well as of any of the great banking houses of this country—consents to serve as a director of a corporation, the corporation expects from that banker his judgment, his wisdom, his maturity, and experience in financial affairs, does it not?

Mr. SACHS. Right.

¹ Mr. Hancock, in a letter of February 16, 1940, submitted additional information in connection with this point. See appendix, p. 13010, paragraph beginning "Page 505, first column, after your suggestion" etc.

Mr. NEHEMKIS. Now if, as you have just testified, a partner of a banking firm, who is also a director, has to withdraw from the discussion and participation, even if it be the final discussion, hasn't he created an absurd situation? He can't then give to the corporation what it expects of him, and he ceases to be of any usefulness to the board?

Mr. SACHS. I don't think so. I think when we speak of this withdrawal from the final vote it is just to lean backward so that a man is not voting for a financial operation in which he eventually, it is true, takes a responsibility, but also may be making a profit.

Mr. NEHEMKIS. So we now have this situation, according to your testimony, that all that really happens is that a director leans back in his chair so that when the law clerk draws up the corporate minutes he can write, "did not participate in the voting and did not participate in the discussion," whereas, as a matter of fact, he participated all along and hence was involved in a specific conflict of interest?

Mr. SACHS. No; I don't think it is quite that way. Let's look at it this way, that if there should be a close division in the board, supposing there were nine directors and he cast the fifth vote, he wouldn't want to be put in that position. He would want the directors to decide finally without him actively having the vote that would put over this particular financial operation. But he would certainly give his best advice and his best judgment as to what he believed was best for the corporations. I don't think—

Mr. NEHEMKIS (interposing). I think we have your position very clearly.

Mr. MILLER. You have spoken back a little further about always having the competition of the market. I wonder if the committee understands just what you mean by the competition of the market that you always have.

Mr. SACHS. I mean by that exactly this. If we are negotiating with the General Foods Co. or any other company for the purchase of its $4\frac{1}{2}$ percent preferred stock, we have the competition in the market in that we know that other comparable preferred stocks have dividend rates of, let us say $4\frac{1}{2}$ percent, that they are selling in the market at such and such prices, that the provisions under the line are so and so, that statistically these other companies compare approximately to the company we are dealing with in such and such a way, and that it has been customary for bankers to charge such and such a spread. We cannot undertake a negotiation in which we would be blind to those conditions in the market in other securities. That is what I mean by the competition of the market. If we tried to buy the General Foods $4\frac{1}{2}$ percent preferred stock at par when similar stocks were selling at 106, let us say, the General Foods officials would know that, and we would know it. In other words, we have that measure before us every moment of the day. Does that answer your question?

Mr. O'CONNELL. Mr. Sachs, the word "competition" is really a wonderful word and it means something different to various people, but I think you would agree, would you not, that the competition you are talking about is a different type of competition than what I would mean when I think of competition between buyers for an article. You are a representative of a buying group, you are buying securities. Now, in the buying there is no competition, in general,

isn't that correct? You do not generally, in this type of situation we have been discussing, compete with other buyers in the commodities with which we are dealing?

Mr. SACHS. Not in the sense that we all stand in the market at the same time.

Mr. O'CONNELL. It is very different; more analogous to a negotiated price between buyer and seller, so it is not the ordinary competitive price you arrive at in dealing in an issue of securities.

Mr. HENDERSON. Isn't it true also that the price finally fixed comes along after all the mechanics and the work and the understandings have been accomplished? It is on the eve of the issue.

Mr. SACHS. But in the preliminary discussions, we don't make a commitment, but we give a general idea of what we think the market is and will be, subject to slight modification in the interim of a 30- or 60-day period.

Mr. HENDERSON. I would like you to be clear, although I am grateful for Mr. Miller's suggestion to you, that I did not mean to suggest for one minute that underwriting does not have to take into account what the prevailing price for like securities is. I think I am not naive enough to take that position. I think we have stated our position in terms of what Mr. O'Connell has said.

Mr. HANCOCK. I think I have seen one case where negotiations were in progress where the management showed a tabulation of at least 100 comparable security issues showing the price, the spreads, the character of the underwriting obligations. I have seen 100 such items drawn off the S. E. C. records.

Mr. HENDERSON. I think I can show you, John, once that price has been fixed within a very short time out of a high percentage of the cases, the underwriter was shown to have guessed wrong as to what the market would pay for that particular security.

Mr. HANCOCK. I would hope he would have. He doesn't claim to have foresight, you know. I don't claim it.

Mr. HENDERSON. That is a point in my argument.

FINANCING BY CLUETT, PEABODY & CO., 1937¹

Mr. NEHEMKIS. Mr. Hancock, in connection with the Cluett, Peabody financing, as the result of Lehman Bros.' displeasure with the way the financing was finally handled, did you not resign from the board of directors?

Mr. HANCOCK. Yes, sir; after the underwriting was finished.

Mr. NEHEMKIS. Now, you have not identified that letter before you. Will you tell me if that is not a true and correct copy of an original in your possession?

Mr. HANCOCK. Yes, sir.

Mr. NEHEMKIS. I should like to read the second paragraph of this letter of August 20, 1937, from you to Messrs. Cluett, Peabody & Co., attention Mr. C. R. Palmer:

After such long service on your board on the part of myself and Mr. Lehman, there cannot longer be any obligation on our part toward the stockholders who bought the stock from us at the time of the original underwriting. Though feeling free of any obligation I have delayed resigning so that the underwriting should be completed and I would be free of any possible charge of harming the company. My firm did not take any interest in the underwriting as it was desirous of

¹ This subject is resumed from p. 12401. -

making it clear that a possible profit does not affect our view of the principles involved in this case.¹

Now, really, did you not feel compelled to resign, Mr. Hancock, because you thought you would no longer be a director who directed?

Mr. HANCOCK. That was made clear in various parts of the correspondence, and that was quite clearly demonstrated by that time.

Mr. NEHEMKIS. In the committee's "Exhibit No. 1814," now in evidence, you had this to say in your communication of May 18, 1937, to Mr. Palmer:

I have no desire to dominate any industrial company as to its financing, but I do object to being asked to ratify a plan arrived at as this one was. In all the talk of the last year that "directors must direct" and of the present day that "bankers must not dominate industrial companies" I feel there was need for very careful handling of the problem and I do not see that this case had that kind of handling.

In other words, you objected, Mr. Hancock, to the kind of financing plan agreed upon by the company, feeling it was not to the best interests of Cluett, Peabody.

Mr. HANCOCK. Well, I had reservations about certain parts of it, but I never had a chance to discuss them.

Mr. NEHEMKIS. Yes; yet the dispute in this case essentially centered about whether Lehman Bros. was being given an adequate participation in the plan of financing which Lehman Bros., through yourself, did not approve or think to be in the best interests of the company.

Mr. HANCOCK. There were certain parts of the plan, as I recall, that stood up, that were approved in principle. The matter of the handling of the preferred stock was, and still is, a matter of doubt.

Mr. NEHEMKIS. But when Goldman, Sachs was given its participation and you felt the company was not treating Lehman Bros. the same as Goldman, Sachs, you therefore resigned.

Mr. HANCOCK. Right.

Mr. NEHEMKIS. However, the corporation did not have any intention of eliminating Lehman Bros. from the underwriting group, did it? In other words, the participation offered Lehman Bros. was the same as the participation that Goldman, Sachs was going to take.

Mr. HANCOCK. The obligation was the same and not the return for it.

Mr. NEHEMKIS. That is a neat way of putting the problem.

Mr. HANCOCK. That is an accurate way of putting it.

Mr. NEHEMKIS. I would call that, if I may, a distinction without a difference.

Mr. HANCOCK. But I differ on that very markedly.

Mr. HENDERSON. I think, Mr. Counsel, you have a partial point there. I want to be recorded as partially in favor of the witness.

Acting Chairman KING. And I want to be recorded as entirely in favor of the witness in that.

Mr. NEHEMKIS. The difference so far as the affairs of the corporation were concerned, between having Goldman, Sachs managers of an issue and having Goldman, Sachs and Lehman Bros. as co-managers of an issue, were really not matters of vital corporation policy so as to affect the future functioning of the corporation?

¹ Included in the appendix, p. 13016.

Mr. HANCOCK. I hope not.

Mr. NEHEMKIS. Even though Lehman Brothers did not have its name in the advertising alongside Goldman, Sachs, your ability, your wisdom, had you remained on the board, would still have been available to the company?

Mr. HANCOCK. It still is on request today.

Mr. NEHEMKIS. But you are not on the board?

Mr. HANCOCK. No, sir; I am not.

Mr. NEHEMKIS. Now you will recall both I, and I think Mr. Commissioner Henderson, have had occasion to refer to Mr. G. A. Cluett's letter to Mr. Sanford Cluett, in which he said [reading from "Exhibit No. 1815"]:

At the time the present company was organized through the joint efforts of Lehman Brothers and Goldman, Sachs & Co., a representative of each banking firm was elected to the board. It was clearly understood at the time that each firm would have a voice in the financial affairs of the company.

Mr. HANCOCK, would it be incorrect for the committee to assume that in view of this circumstance your concern about directors who don't direct, and bankers dominating industrial concerns was, shall I say, somewhat of a rationalization?

Mr. HANCOCK. It would not be correct to say that. I didn't even know that letter existed at the time and I don't believe it is a factual statement of the facts at the time.

Mr. NEHEMKIS. Mr. G. A. Cluett knew something about the affairs of the company.

Mr. HANCOCK. I wasn't in the negotiation. I am satisfied he wasn't when the first sale was made.

Mr. NEHEMKIS. I am perfectly happy to accept your explanation.

AGREEMENT OF 1938

Mr. NEHEMKIS. Mr. Sachs, did not this internecine warfare, so to speak, cause a number of the companies for whom the two firms had been bankers considerable irritation?

Mr. SACHS. Yes; a certain amount of, shall I say, temporary irritation?

Mr. NEHEMKIS. And to repeat your excellent phrase, such temporary irritation, if permitted to continue, would eventually create a situation where the business of both houses would be materially reduced.

Mr. SACHS. Both houses?

Mr. NEHEMKIS. Yes; your house and Lehman Brothers.

Mr. SACHS. Possibly.

Mr. NEHEMKIS. Now the partners of Goldman, Sachs and Lehman Brothers being essentially statesmen, did they not determine to end this hostility between the two firms?

Mr. SACHS. They did; yes.

Mr. NEHEMKIS. And the two houses reached a rapprochement and joined hands in a new agreement on June 30, 1938.

Mr. SACHS. That is correct.

Mr. NEHEMKIS. I show you an agreement of June 30, 1938, between the houses of Goldman, Sachs and Lehman Brothers. Will you be good enough to identify it?

Mr. SACHS. Yes; that is it.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1817" and is included in the appendix on p. 12739.)

Mr. NEHEMKIS. As statesmen, however, you were prepared for any contingency, so in article IV of the said agreement it was provided as follows:

These arrangements may be terminated by either house at any time after January 1, 1939, upon three months' written notice to the other house.

Mr. Sachs, up to the time of your testimony has either house as yet given notice of termination?

Mr. SACHS. No, sir.

Mr. HENDERSON. In other words, the high contracting parties have not denounced under article IV; is that it?

Mr. SACHS. Not yet.

Mr. HANCOCK. Nor anything else.

Mr. NEHEMKIS. We might, then, perhaps, appropriately conclude your testimony, Mr. Sachs, in the words of Father Divine, "Peace, it's wonderful"?

Mr. SACHS. Correct.

Acting Chairman KING. The committee stands adjourned until 10:30 tomorrow morning.

(Whereupon at 3:45 o'clock the committee recessed until 10:30 Tuesday morning.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

TUESDAY, JANUARY 9, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE.

Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment on Monday, January 8, 1940, in the Caucus Room, Senate Office Building, Senator William H. King presiding.

Present: Senator King (acting chairman); Representative Williams; Messrs. Henderson, Lubin, O'Connell, and Brackett.

Present also: Clifton Miller, Department of Commerce; Thomas C. Blaisdell, National Resources Board; and Peter R. Nehemkis, Jr., special counsel, and Oscar L. Altman, associate financial economist, Securities and Exchange Commission.

Acting Chairman KING. The committee will be in order.

Mr. NEHEMKIS. Mr. Edward Greene, will you take the witness stand, please?

Acting Chairman KING. Do you solemnly swear the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREENE. I do.

Acting Chairman KING. Proceed.

Mr. HENDERSON. Mr. Chairman, in the presentation this morning, the S. E. C. Investment Banking Section, as I understand it, is utilizing this particular case of Cleveland-Cliffs Iron Co. as an example of the difficulties which banks found in accomplishing the divorcement that was intended by the Banking Act of 1933.

TESTIMONY OF EDWARD B. GREENE, PRESIDENT, CLEVELAND-CLIFFS IRON CO.,¹ CLEVELAND, OHIO

Mr. NEHEMKIS. Mr. Greene, will you state your full name and address, please?

Mr. GREENE. Edward B. Greene, Cleveland, Ohio.

Mr. NEHEMKIS. Are you not president of the Cleveland-Cliffs Iron Co., Mr. Greene?

Mr. GREENE. I am.

Mr. NEHEMKIS. Does not the Cleveland-Cliffs Iron Co. own major iron mines in Lake Superior, and is it not one of the major ore producers in the United States?

Mr. GREENE. I think that is a fair statement.

¹ Mr. Greene previously testified during hearings on the iron ore industry; see Hearings, Part 18.

Mr. NEHEMKIS. Prior to your appointment as president of the Cleveland-Cliffs Iron Co., had you not been a vice president of the Cleveland Trust Co.?

Mr. GREENE. I was chairman of the executive committee and vice president.

Mr. NEHEMKIS. Had not the Cleveland Trust Co. been a large creditor of Cleveland-Cliffs Iron Co.?

Mr. GREENE. They had been for something like 3 years.

BANK DEBT OF THE COMPANY

Mr. NEHEMKIS. Did not the company have considerable bank debt outstanding, occasioned largely by the purchase of steel securities?

Mr. GREENE. They had, by the purchase of one particular investment of the Corrigan, McKinney Steel Co.

Mr. NEHEMKIS. Did not the bank debt amount to about \$25,000,000 held chiefly by a group of eight creditor banks?

Mr. GREENE. Practically that is correct, held by eight banks and one or two others.

Mr. NEHEMKIS. And among those banks who were in a creditor position was the Pankers Trust Co. of New York?

Mr. GREENE. Correct.

Mr. NEHEMKIS. Mr. Chairman, I offer in evidence an extract from the prospectus of the Cleveland-Cliffs Iron Co. in connection with the first mortgage sinking fund 4¾ percent bonds due November 1, 1950, principal amount \$16,500,000, taken from the registration statement filed with the Securities and Exchange Commission.

(The extract referred to was marked "Exhibit No. 1818" and is included in the appendix on pp. 12741.)

Acting Chairman KING. How did you incur such a large indebtedness?

Mr. GREENE. The Cleveland-Cliffs Iron Co.?

Acting Chairman KING. Yes. As I understand, \$25,000,000 was held by eight banks and some smaller ones.

Mr. GREENE. In March of 1930 the Cleveland-Cliffs Iron Co. purchased a 62½ percent interest, or rather securities that represented a 62½ percent interest, in the Corrigan McKinney Co. That covered practically an investment of thirty-seven and a half million dollars, part of which was cared for in other ways.

Acting Chairman KING. You were on the stand before and I remember some testimony given respecting the holdings of the Cleveland-Cliffs Iron Co.

Mr. GREENE. That was The Cliffs Corporation.

Mr. NEHEMKIS. I might add, Senator, that this story this morning picks up where the committee left off in its earlier hearing on the subject.

Acting Chairman KING. Sort of an addendum.

Mr. NEHEMKIS. You might call it that, or an appendix, as it were.

Mr. NEHEMKIS. Mr. Greene, is it not a fact that you were really placed in charge of the affairs of the company in order to clean up this debt situation in 1933?

Mr. GREENE. No; that is partially correct only. I had been asked by the banks to take that position and had declined it until I was asked by the management to do so. I did not go in as a representative of

the banks. I went in at the request of the management, and you might say on account of representing one of the largest interests in the company. I represented a very substantial interest in the company.

DISCUSSIONS WITH BANKERS TRUST CO. WITH REGARD TO A BOND ISSUE

Mr. NEHEMKIS. About the middle of January 1935 did not the Bankers Trust Co. of New York suggest to you that it might be possible to refund the \$25,000,000 of outstanding bank loans with a long-term bond issue?

Mr. GREENE. They did. I would have said possibly December 1934.

Mr. NEHEMKIS. Had not the Bankers Trust Co. already been at work on such a plan by which the then bank creditors, including Bankers Trust, would take the first five or six million, the balance to be sold wholesale to a number of life insurance companies or investment trusts?

Mr. GREENE. The plan, as time went along, between, we will say, January '35 and possibly November of '35, changed a number of times. It gradually evolved into something very different in the final consummation of the plan that went through in December, if I recall, but was agreed upon in November. Now the original plan—

Mr. NEHEMKIS (interposing). I will ask you to develop that in the course of your testimony, if you will, Mr. Greene.

At the time of your discussion, or discussions, I should say, with the Bankers Trust Co., were you aware that the Bankers Trust Co. was forbidden by law to engage in underwriting to refund an issue concerning which you were holding discussions at the time?

Mr. GREENE. I was aware of it.

Mr. NEHEMKIS. None the less you discussed the possibility of a bond issue with Mr. Tompkins, vice president of the Bankers Trust Co., and other members of the staff and associates of Mr. Tompkins.

Mr. GREENE. No; that is not correct. I discussed with Mr. Tompkins a plan of their acting as agent in disposing of an issue of bonds to other institutions in which I was told they would not be interested and was told that they would not be acting contrary to that Banking Act, and I understood that perfectly from the first day on.

Mr. HENDERSON. You say, Mr. Greene, you were told. Was that advice of counsel?

Mr. GREENE. I discussed it with Mr. Tompkins and Mr. Tompkins advised me that their position as agent was supported and approved by eminent counsel.

Mr. HENDERSON. But when you went down to talk to Mr. Tompkins you had not been advised whether or not they could act as agent; is that it?

Mr. GREENE. When I went down there, I didn't exactly know what was coming up. I went down to discuss it.

Mr. HENDERSON. You went down to discuss the refinancing?

Mr. GREENE. Yes.

Mr. HENDERSON. So to that extent you didn't go down to discuss his agency. I mean you went down to see how this particular perplexity of yours could be cleared up.

Mr. GREENE. No; but what I meant was I did not have the plan we were going to discuss before me before I had my first talk with Mr. Tompkins.

Mr. NEHEMKIS. That evolved as the result of a number of discussions?

Mr. GREENE. That is right.

Mr. NEHEMKIS. And it was only after you had formulated a program that seemed feasible that the problem of whether or not Bankers Trust could fulfill that program was reached, and it was at that point that the agency matter was discussed?

Mr. GREENE. No; quite the contrary. That came up at the first discussion, the very first discussion which I think was the last week in January. In other words, this came up immediately in my first talk with Mr. Tompkins and of course it was answered. While it did not pertain to me it was answered to the satisfaction of both of us.

Acting Chairman KING. The situation was such that you had to have some financial relief, that is, these companies did? Those obligations were due and efforts were being made to secure the adoption of some plan that would relieve the situation, was that it?

Mr. GREENE. Of course, but it was more than that. We were operating under a creditors' committee, and if you know what it means to operate under a creditors' committee of eight, you know that it is rather slow work and it is a condition that you are very glad to reach the end of.

Acting Chairman KING. So it was important that some disposition be made of the matter, and a plan worked out under which the obligations could be met and a continuation of the business proceeded with.

Mr. GREENE. Correct; we reestablish the credit of the company; better everything, better our ability to sell.

Mr. NEHEMKIS. At this time was there not under consideration a merger of the Cleveland-Cliffs Iron Co. and the Cleveland-Cliffs Co., which in turn held the Cleveland-Cliffs Iron Co. common stock?

Mr. GREENE. At the first discussion, that is correct. We had been discussing that for some time.

Mr. NEHEMKIS. That is all I wanted you to give me at this time. There was also under discussion the merger of Corrigan-McKinney and the Republic Steel Corporation, was there not?

Mr. GREENE. Yes; that was in process.

Mr. NEHEMKIS. That was my question. Your answer is "yes"?

Mr. GREENE. Yes.

Mr. NEHEMKIS. Thank you, sir. Now at this time the collateral under the Bankers Trust loan included, did it not, directly and indirectly, important holdings of Corrigan-McKinney stock?

Mr. GREENE. At what time?

Mr. NEHEMKIS. During the time that you were discussing the matter with the Bankers Trust.

Mr. GREENE. Not at the beginning. Let me see.

Mr. NEHEMKIS. Was this true immediately prior to your first discussion with Mr. Tompkins?

Mr. GREENE. I don't know as I quite understand your question. Would you repeat the first question?

Mr. NEHEMKIS. Would the reporter repeat the first question I asked of the witness, please?

(The reporter read the question: "Now at this time the collateral under the Bankers Trust loan included, did it not, directly and indirectly, important holdings of Corrigan-McKinney stock?")

Mr. NEHEMKIS. As a matter of fact, is it true or isn't it?

Mr. GREENE. The answer would be not only Corrigan-McKinney stock, but a holding company that held Corrigan-McKinney stock.

Mr. NEHEMKIS. That is correct. Hence, Mr. Greene, the good will of Bankers Trust Co. was essential, was it not, in effecting both mergers?

Mr. GREENE. Well, I wouldn't go so far as to say that, only to the extent that they were represented on a creditors' committee.

Mr. NEHEMKIS. Now at the end of January 1935, after several days of negotiations, did not you and Mr. Tompkins agree that Cleveland-Cliffs Iron Co. would float an issue of \$24,000,000 of first mortgage and collateral trust bonds, and that part of the proceeds would be used to pay off the bank creditors, including Bankers Trust Co.?

Mr. GREENE. Well, I would say that at our first interview—

Mr. NEHEMKIS (interposing). Let me repeat the question.

Mr. GREENE. We did not reach the full conclusions.

Mr. NEHEMKIS. That was not my question. I made my question very specific, Mr. Greene. I said "At the end of January 1935, after several days of negotiations," that was the question. Can you answer my question?

Mr. GREENE. The latter part is correct. I would say this. At the first negotiation—and I do not recall that there was but one session—the agreement was only that the Bankers Trust Co. should endeavor as agent to place with one or more institutions a loan of \$25,000,000, that that was as far as we got.

Mr. NEHEMKIS. All right. Now the understanding that you reached with Mr. Tompkins was reduced to writing, was it not?

Mr. GREENE. It was.

AGREEMENT OF JANUARY 30, 1935

Mr. NEHEMKIS. I show you, Mr. Greene, the document which purports to be the agreement which was reduced to writing. Will you examine it and tell me if you recognize the photostat copy as a true and correct copy of the original?

(Acting Chairman King made an off-the-record remark regarding the relevancy of the testimony.)

Mr. HENDERSON. Mr. Chairman—

Acting Chairman KING. It is off the record. Proceed.

Mr. HENDERSON. Mr. Chairman, I think your statement, however, makes it almost incumbent on me to say that I think that as we go forward in this presentation, the relevancy will be very clear. In this particular case, Bankers Trust held part of the loan, this \$25,000,000.

Mr. NEHEMKIS (interposing). Mark this and return it.

(The agreement referred to was marked "Exhibit No. 1819" and is included in the appendix on p. 12741.)

Mr. HENDERSON (continuing). There had been an act passed by the Congress of the United States which was intended to separate, as you know, underwriting from banking, and Mr. Greene went to the Bankers Trust, and there was entered into this agreement which has been offered in evidence here—

Mr. NEHEMKIS (interposing). It is being marked for identification, sir.

Mr. HENDERSON. Which poses the question that I stated at the beginning of this hearing. If at any time in the proceedings it is not clear that that is relevant I will be perfectly willing to withdraw the entire hearing.

Mr. NEHEMKIS. As the Senator knows, the question of relevancy always relates to counsel's work, and the Senator is too distinguished a lawyer to want me, a much younger man, to proceed without laying a very careful foundation.

Acting Chairman KING. I assume from what Mr. Henderson—I beg your pardon—the Commissioner has just stated that it deals with the question of a possible infraction of the law calling for separation of banking.

Mr. HENDERSON. I said the difficulty that confronted the bank which formerly occupied a dual position and it was not intended to have a separation.

If you will recall, Senator King, you were not here at the beginning of the investment-banking hearings. We are undertaking to present almost as complete a case as if we were on trial. We could shorten it very considerably, but I think, in fairness to the witnesses, that there ought to be a full documentation of the things presented here.

Mr. NEHEMKIS. According to the terms of that agreement, the Cleveland-Cliffs Iron Co. contemplated a merger or consolidation with the Cliffs Corporation, which owned all of its common stock, did it not?

Mr. GREENE. I would say the management contemplated that.

Mr. NEHEMKIS. As part of this merger or consolidation, did not Cleveland-Cliffs Iron Co. propose to issue some \$24,000,000 of first-mortgage and collateral-trust bonds?

Mr. GREENE. Either \$24,000,000 or \$25,000,000.

Mr. NEHEMKIS. Which is it?

Mr. GREENE. Well, I will have to refer to that. The amount that was—

Mr. GREENE. Very well.

Mr. NEHEMKIS (interposing). Suppose you accept my figures, subject to later correction.

PARAGRAPH 7 OF THE AGREEMENT OF JAN. 30, 1935

Mr. NEHEMKIS. I read to you now paragraph 7 of this agreement which was entered into by the respective parties. It reads as follows.

Acting Chairman KING. Has he identified that?

Mr. NEHEMKIS. He has, sir. [Reading from "Exhibit No. 1819"]:

You [that is to say, the Bankers Trust Company] are to use your best efforts to secure a group or syndicate of investors who will purchase the entire issue of said bonds as above stated, or who will enter into an underwriting agreement in form acceptable to us [that is, Cleveland Cliffs] for the purchase of the entire issue of said bonds.

I want you to pay rather careful attention, if you will, Mr. Greene, to the next sentence [reading from "Exhibit No. 1819"]:

You shall not be liable under any conditions for your failure to secure the group or syndicate referred to above or for the purchase yourselves or for the underwriting of all or any part of said bonds.

End of the quotation from article 7 of the agreement.

Would you be good enough to explain the occasion for the inclusion of the last part of this provision limiting the liability of the bank, which I have just read to you?

Mr. GREENE. Well, the contract was prepared by the Bankers Trust Co. and at that time we had no definite plan; it was merely that they as agents were going to endeavor to place a bond issue of an amount to pay off what we called our special bank loan and relieve the company from its short-time loans, and just how it was to be done wasn't then determined.

Mr. NEHEMKIS. Mr. Greene, may I ask whether Mr. Tompkins was not responsible for the inclusion of that provision?

Mr. GREENE. Well, I think he was—no more than the rest of them. Mr. Tompkins or his department drew that informal agreement.

Mr. NEHEMKIS. May I ask whether you insisted upon that particular provision; was it a suggestion that came from you?

Mr. GREENE. Not that portion. The whole agreement was drawn by Mr. Tompkins, or his department, the whole agreement. It wasn't that Mr. Tompkins drew that; the whole agreement was drawn—

Mr. NEHEMKIS. Then just to summarize briefly in response to my first question to you, the particular provision which I am now questioning you about was not incorporated into the contract at your request, but rather at the insistence of Mr. Tompkins. That is what you have just testified, substantially.

Mr. GREENE. That is correct, but that leaves the impression that I might have drawn the rest of it, and he might have put that in.

Mr. NEHEMKIS. I quite understand that the whole agreement was drawn at the instance of the Bankers Trust Co., and while we are discussing the agreement, do you happen to know the firm of counsel that was responsible for the drafting of that agreement?

Mr. GREENE. I don't think I could tell you.

Mr. NEHEMKIS. If I mention to you White and Case, would that help you?

Mr. GREENE. I only recall that White and Case quoted to me as approving of their acting as agents in this matter.

Acting Chairman KING. Reported to you as approving?

Mr. GREENE. In my conversation with Mr. Tompkins when we were discussing the question of the Banking Act of 1933, the question of their acting as agent in such a matter, it was quoted to me that Bankers Trust had been advised by their counsel that they were acting well within their rights.

Acting Chairman KING. For my own information, as I understand the situation—if I am in error I want to be corrected—the companies that you represented, temporarily, I suppose, owed about \$25,000,000, and the Bankers Trust Co. was one of the creditors. The obligations were due, they were short-term obligations, and it was believed necessary to adjust the situation and to get a new financing plan adopted. The Bankers Trust Co. owned about one-eighth of the \$25,000,000 obligation.

Mr. GREENE. About one-sixth.

Acting Chairman KING. And the rest of it was held by other banks.

Mr. GREENE. Mostly by seven other banks, and two individuals or other corporations.

Acting Chairman KING. And you went to the Bankers Trust Co. for the purpose of discussing the steps necessary to be taken in order to accomplish the desire, namely, to convert the short terms into long terms or to make some arrangement to meet the situation which was then developed.

Mr. GREENE. That is a correct general statement of the situation.

Mr. NEHEMKIS. Mr. Greene, did you understand by this provision, paragraph 7,¹ which we have been discussing, that Bankers Trust Co., in fact, could take a share on original terms of the bonds which were to be underwritten but that they were not liable to you if they did not?

Mr. GREENE. I don't think I gave it any particular thought.

Mr. NEHEMKIS. Did not this provision that we have been discussing, article 7, give Bankers Trust Co. all of the advantages of an underwriter with none of the risks?

Did you happen to think of that?

Mr. GREENE. I am quite sure my mind was entirely devoted to the troubles of getting a company that had a \$25,000,000 short-term loan on its hands with four or five million of regular indebtedness, my thoughts were more than occupied with that problem.

Mr. NEHEMKIS. You left the details, the mechanics of providing for those arrangements, to your friend Mr. Tompkins?

Mr. GREENE. Well, I think very properly.

Mr. NEHEMKIS. I wasn't inferring in the slightest, Mr. Greene, and don't want you to think for a minute that I had any other thought in mind. I want to continue reading from the contract that you entered into with the Bankers Trust, and I now quote [reading from "Exhibit No. 1819"]:

Upon the purchase by said group or syndicate of the entire issue of said bonds, or upon the sale of said entire issue of bonds under said underwriting agreement, we [meaning Cleveland Cliffs] agree to pay to you [meaning Bankers Trust] for your services hereunder in cash, a fee of one per cent (1%) of the entire principal amount of said bonds.

Mr. Greene, what return did Cleveland-Cliffs expect from Bankers Trust Co. for this fee of \$240,000; that is to say, 1 percent of \$24,000,000?

Mr. GREENE. We expected that placing of a \$24,000,000 or \$25,000,000 bond issue at a 1-percent fee—now, the cost of the Cleveland-Cliffs for their credit situation at that time, that was a very satisfactory arrangement. In other words, that was, in our opinion, better than we had expected to get at that time.

Mr. HENDERSON. That is, you expected that this fee, without the risks that were specifically eliminated in the contract, would be worth while to the Cleveland-Cliffs if they could in some manner get an underwriting group to handle the thing for you.

Mr. GREENE. That is it exactly.

Mr. HENDERSON. You expected to pay the underwriting fee in addition to this.

Mr. GREENE. Oh, no; no; that is the point. At this time this was to be a placing of this entire issue at par, and we would get all the proceeds.

Mr. HENDERSON. This would be the sum total of the expenses.

¹ "Exhibit No. 1819."

Mr. GREENE. Then we pay the Bankers as agent a fee for services. Now, I think we ought to state here so that the members of the Commission will have those facts in mind that this contract was never carried out and was declared by both parties to it to be out the window some time in the spring, so that we are discussing a contract, or really not a contract, a memorandum, which in fact was never carried out.

Mr. NEHEMKIS. We will develop that in due course, Mr. Chairman. I would prefer that the witness confine himself to the questions immediately directed to him and as is our usual procedure, he is at liberty to make statements after the line of inquiry has been developed.

Acting Chairman KING. It seems to me if this contract was never carried out it is not very material to proceed with it.

Mr. NEHEMKIS. I don't like to take issue with the statement of the witness, but that is not, strictly speaking, a correct statement, as the evidence will show.

Acting Chairman KING. Then proceed.

Mr. NEHEMKIS. Mr. Greene, I show you a memorandum which purports to have been prepared by you dated June 28, 1935. Will you examine this and tell me whether you recognize it as a true and correct copy?

Mr. GREENE. It is.

Mr. NEHEMKIS. The memorandum identified by the witness, may it please the committee, is offered in evidence.

(The document referred to was marked "Exhibit 1820" and is included in the appendix on p. 12743.)

SIGNING THE AGREEMENT OF JANUARY 30, 1935

Mr. NEHEMKIS. Now, Mr. Greene, were you not somewhat reluctant to execute the contract to which reference has been made?

Mr. GREENE. Well, I was reluctant only because the matter hadn't been submitted to the board of directors. I covered that point by writing above the signature—

Mr. NEHEMKIS (interposing). I will come to that in just a moment.

Mr. GREENE. Well, I can't answer your question. You asked if I wasn't reluctant. I wasn't reluctant to execute the contract as it is drawn with a memorandum included in it.

Mr. NEHEMKIS. Correct.

Mr. GREENE. I had to explain that, Mr. Nehemkis.

Mr. NEHEMKIS. Fine; thank you, sir. Now, you also wrote in the memorandum which you identified and which is now in evidence as follows [reading from "Exhibit No. 1820"]:

At the time this contract was drawn, the writer assumed that he would take it to Cleveland and submit it to the Board and execute it only after approval by the Board. Mr. Tompkins objected to this procedure and wanted the writer to sign it at this time.

In other words, Mr. Tompkins insisted upon your executing the contract.

Mr. GREENE. Mr. Tompkins regarded that as more or less—and I did, too—as a personal memorandum between the two of us, as a matter of good faith on my part to recommend such a plan to the Board, which I was not only willing to do but very eager to do.

Mr. NEHEMKIS. Mr. Greene, do I understand you correctly to say that this seven-page document which I show you, drafted by the law firm of White and Case, together with a formal letter of transmittal approving this contract as to form was regarded by you and Mr. Tompkins, the principals, as an informal document?

Mr. GREENE. I not only do, but I said so to Mr. Tompkins.

Mr. NEHEMKIS. I just wanted to be sure I thoroughly understood you on the point. You continue in the memorandum which you identified a moment ago as follows [reading further from "Exhibit No. 1820"]:

I explained to him that I had no authority to do so and that my signature would not be binding on the company and would only be a matter of good faith on my part to exert my best efforts to secure the approval of the Board.

Now, Mr. Greene, your previous statement becomes relevant. Under these circumstances you inserted above your signature the following, "Subject to approval of the board of directors." That is correct, isn't it?

Mr. GREENE. That is correct.

Mr. NEHEMKIS. Now, you further wrote in your memorandum which you have identified and which is in evidence as follows [reading from "Exhibit No. 1820"]:

Mr. Tompkins stated this was entirely agreeable to him and stated it signed with that understanding. After some further protest the witness signed the instrument but wrote in above his signature "Subject to the approval of the Board of Directors."

Now, can you tell me, Mr. Greene, why Mr. Tompkins wanted to sign that agreement before you left New York City?

Mr. GREENE. Well, I think I can. He was thoroughly familiar with the Cleveland-Cliffs situation. He felt that the matter of time was important, and he felt that if he had a commitment on the part of the president of the company, even though it was an informal understanding, that that would enable him in a better way to approach the institutions who would be the purchasers of this issue. In other words, until he had something in writing it probably put him in a weak position to approach those institutions he had in mind, which I assume were insurance companies.

Mr. NEHEMKIS. Mr. Greene, I show you the contract of January 1935, which has been previously identified by you, and ask whether that is not your signature, "E. J. Greene, President."

Mr. GREENE. It is E. J. That is my signature.

Mr. NEHEMKIS. Is that your handwriting immediately above your signature which reads, "Subject to the approval of the Board of Directors"?

Mr. GREENE. That is a photostatic copy of my writing.

Mr. HENDERSON. You signed this as president and also subject to approval of the Board of Directors.

Mr. GREENE. Yes.

Mr. HENDERSON. Did you sign that "Subject to the approval of the Board of Directors" standing up, or were you mad, or something at the time?

Mr. GREENE. Oh, no, indeed; it was a very happy occasion as far as I was concerned.

Mr. HENDERSON. Maybe it registers happiness, then.

Mr. NEHEMKIS. In these negotiations, Mr. Greene, did you not consider the Bankers Trust Co. was your agent acting in behalf of the Cleveland-Cliffs Iron Co.?

Mr. GREENE. I think that is what I considered.

Mr. NEHEMKIS. And as agent, Bankers Trust Co. was to organize a syndicate to underwrite a bond issue for Cleveland-Cliffs Iron Co.

Mr. GREENE. You may call it a syndicate—a group of institutions.

Mr. NEHEMKIS. It is the same thing, I believe.

Mr. GREENE. Yes.

Mr. NEHEMKIS. I want to read to you from a memorandum which you previously identified and which is in evidence, as follows: The caption of this memorandum which you will recall has the following [reading from "Exhibit No. 1820"]:

Brief summary of Negotiations with Bankers Trust Company, represented throughout by Mr. B. A. Tompkins, and at times by Dana Kelly and Mr. Graham, and also Lehman Brothers represented by Mr. Gutman and Mr. Szold.

And then on page 1 of the memorandum there appears the following:

A few days after the extension was granted the writer returned to New York and took the matter up with Mr. Tompkins and his associates—

And then on page 2 appears the following [reading further]:

Mr. Tompkins stated this was entirely agreeable to him and wanted it signed with that understanding.

So that at these conferences with your agent, Bankers Trust Co., there were also present investment banking firms who likewise participated in the negotiations. Is that correct in accordance with your memorandum?

Mr. GREENE. Well, that, unless I am rather permitted to tell the story, it is hard to answer your question. This is another deal. This is a gradual evolving of this deal into the thing that couldn't be accomplished and then we began to explore other things, and you are getting into either the second or third phase of it.

Mr. NEHEMKIS. In 1934, had not some of the partners of Field, Gloré & Co., suggested to you that their firm might be interested in financing Cleveland-Cliffs?

Mr. GREENE. I can't remember the specific occasion, but I am inclined to think that is correct.

Mr. NEHEMKIS. Is it not a fact, Mr. Greene, that Hayden, Stone & Co., a firm of investment bankers in New York, had been in contact with Mr. Mather, a large stockholder in Cleveland-Cliffs with reference to buying a block of his stock?

Mr. GREENE. I think they had bought a block of both kinds of stock.

Mr. NEHEMKIS. Had not Hayden, Stone & Co. also been in contact with you in regard to possible Cleveland-Cliffs financing prior to the time you entered into the contract with Bankers Trust Co.?

Mr. GREENE. I think not; I believe that the discussions that I had with the man who might be said to represent the Charles Hayden interests (they are a group of things) were mainly interested in the question of the terms of a possible merger between Cleveland-Cliffs and Cliffs. I believe Bankers Trust were the first one in a concrete and important way to take up the question of financing our loan. I do not think that Hayden, Stone or Charles Hayden interests had up to the time of January 1935, ever been specific about any possibility of financing.

MR. GREENE'S SUGGESTIONS FOR THE UNDERWRITING GROUP

Mr. NEHEMKIS. Did you not ask Mr. Tompkins to include Hayden, Stone in the final underwriting syndicate?

Mr. GREENE. Now, you are getting again into the next phase and the one after the plan as outlined in that informal agreement.

Mr. NEHEMKIS. Which informal agreement, the seven-page legal document that I waved up here a moment ago?¹

Mr. GREENE. Yes; the one that I said was subject to approval of the Board of Directors. It was after that plan was entirely given up that we got into other discussions and other possibilities and at that time, it is true that I suggested not only Hayden, Stone, but Kuhn, Loeb and Field, Glore.

Acting Chairman KING. What do you mean by the words "given up" after that contract Mr. Nehemkis said he waved before you? What do you mean by "given up"? You regarded it, as I understood you in your testimony, as an informal understanding or contract or agreement that had to be subject to the approval of the Board and then you state now it was given, as I understand you, that the plan that was outlined in that informal agreement was given up.

Mr. GREENE. The story, and I won't go into any more particulars than necessary to answer your question, Senator King, the situation was this: In the mining business, while there is a parent company, it is very necessary to have a great many subsidiary mining companies for the reason that you often tie in minor interests; consequently, when we came to take this matter up, our bankers or agent took it up, either one. We found that the relationship between our property, which was represented by land in fee and that which is represented by the stocks of mining companies, were not in the proportion that the regulations required for insurance companies of the State of New York. That was a very big obstacle, and led to some considerable discussions and study of our figures. In addition, in February, the Federal Government filed a suit against Republic and against the merger, and our attorneys felt that we should make no move in the way of attempting to consolidate Cleveland-Cliffs and Cliffs Corporation until that litigation at least was tried. For those two reasons, the financing as outlined in this seven-page document had to be given up for the time, and then we began to discuss the other means of financing, and that led to an entirely different situation, and the question that Mr. Nehemkis has asked me a couple of times refers to that second phase, and I couldn't very well go from one to the other without explaining that that developed after we gave up the possibility of this entire thing, so that we approached it from an entirely different way and in the way of going to the regular investment bankers in the standard or conventional way.

Mr. NEHEMKIS. You testified a moment ago, Mr. Greene, that you asked the Bankers Trust Co. to include Hayden, Stone & Co., Field, Glore & Co., and Kuhn, Loeb & Co., did you not?

Mr. GREENE. I did.

Mr. NEHEMKIS. Now, had not all three of these investment banking firms had dealings with Cleveland-Cliffs at one time or other in the past, or its associated companies?

Mr. GREENE. That is correct, and that is why I suggested, I didn't limit it. I just said it wasn't up to me to indicate only those that should be in the group, but I did want those three given the invitation, that was all.

Mr. NEHEMKIS. And in view of the previous association of these three investment banking firms with the interests of Cleveland-Cliffs, they might, perhaps, by the customs and mores of the investment banking world, be said to have had an interest in Cleveland-Cliffs financing?

Mr. GREENE. I don't exactly know what you mean by interest.

Mr. NEHEMKIS. I mean they were concerned about it, they had rendered previous services to your companies and therefore they were interested in anything that pertained to financing, they were very much concerned about the future of the situation. That is what I mean by interest.

Mr. GREENE. I think they took a friendly and cooperative attitude toward us and we wanted to be courteous enough to see that they were included.

Acting Chairman KING. Did they hold any of the securities or obligations of the Cliff or any of those organizations that owed the twenty-five million? Did they have any stock?

Mr. GREENE. Well, I just spoke about Mr. Charles Hayden's interest, having made a purchase. I am quite sure that none of the others had any interest whatsoever.

Acting Chairman KING. You mean stock interest?

Mr. GREENE. I don't think they had any stock or obligation of bonds or securities, so far as I know.

Mr. NEHEMKIS. These four firms that we have just enumerated were finally included in the syndicate, were they not?

Mr. GREENE. It was my understanding that when they got together to make a deal they wanted to keep it to themselves.

Mr. NEHEMKIS. That isn't my question, Mr. Greene. I think you and I will get along much better if you will try to answer my simple questions a little less cryptically. I said to you: These four firms were finally included in the syndicate, were they not?

Mr. GREENE. They were.

Mr. NEHEMKIS. That's fine, thank you, sir. Was not Lehman Brothers finally selected as the manager of the underwriting syndicate? Do you recall?

Mr. GREENE. They were selected.

Mr. NEHEMKIS. Do you recall, Mr. Greene, how it happened that Lehman Brothers was selected as the manager of the syndicate?

Mr. GREENE. At the suggestion of Mr. Tompkins.

Mr. NEHEMKIS. Mr. Tompkins being the vice president of the Bankers Trust Co.

Mr. GREENE. Yes, sir.

Mr. NEHEMKIS. Now I show you a telegram from a Mr. Kelley to a Mr. Geffine, dated February 2, 1935, obtained from the files of the Cleveland-Cliffs Iron Company. Will you be good enough to identify this as being a true and correct copy of an original in your possession and custody?

Mr. GREENE. Did you ask me to identify this?

Mr. NEHEMKIS. Yes; just tell me whether you recognize that as being a true and correct copy of an original in your possession and custody.

Mr. GREENE. I haven't the slightest idea.

Mr. NEHEMKIS. You don't know what is in your files?

Mr. GREENE. Well, it was 5 years ago; I wouldn't remember a telegram to another officer.

Mr. NEHEMKIS. Then you will have to assume that in response to our request you did make this available, shall we say?

Mr. GREENE. Yes.

Mr. NEHEMKIS. Do you accept that?

Mr. GREENE. Yes, sir.

Mr. NEHEMKIS. This telegram is offered in evidence, Mr. Chairman.

Acting Chairman KING. It will be received.

(The telegram referred to was marked "Exhibit No. 1821" and appears in full below.)

Mr. NEHEMKIS. I want to read from this telegram signed by Dana Kelly of the Bankers Trust Co., addressed to Mr. Geffine, vice president of the Cleveland-Cliffs Iron Company [reading from "Exhibit No. 1821"]:

Plan be Cleveland Monday morning with Lehman representatives if satisfactory to you. Regards.

And I want to call your attention, if I may, Mr. Greene, the date of that telegram, February 2, 1935. Now your agreement¹—and by agreement I am now, for the sake of precision and accuracy, referring to that seven-page legal document which you had signed with the Bankers Trust Company—was signed on January 30, 1935. The telegram which I have just read from was dated February 2, 1935. So that within 3 days after you had concluded your negotiations with Mr. Tompkins he had apparently already interested one underwriter in the deal, Lehman Brothers. Had Mr. Tompkins discussed with you, Mr. Greene, prior to the execution of the contract of January 30, 1935, the possibility that Lehman Brothers would manage the issue?

Mr. GREENE. My best recollection is that we didn't discuss that on January 30, but we discussed it some later. I am surprised to note that Lehman Brothers were in the picture as early as that.

Mr. NEHEMKIS. It is always very interesting to have the witnesses enlightened about their own affairs, Mr. Greene.

In November, did you not request the bankers that \$2,000,000 of the issue be granted on original terms to various Cleveland investment banking houses?

Mr. GREENE. I went over the list and urged that the investment bankers of Cleveland, where I knew there would be a market, be included. I couldn't tell you whether it was just \$2,000,000.

Mr. NEHEMKIS. Substantially that.

Mr. GREENE. Substantially that amount.

Mr. NEHEMKIS. Do you recall whether the houses that you suggested for participation of \$2,000,000 actually received the participation in that actual amount?

¹ "Exhibit No. 1819," appendix, p. 12741.

Mr. GREENE. It is my recollection that they did, possibly slightly more.

Mr. NEHEMKIS. I think we had better stick to the \$2,000,000 figure; that is in the registration statement.

Did you not ask Mr. Tompkins to grant A. G. Becker & Co., of Chicago, a participation of \$200,000? Do you recall that?

Mr. GREENE. I believe we did.

Mr. NEHEMKIS. And do you recall whether or not A. G. Becker & Co. was granted such a participation?

Mr. GREENE. I am quite sure they were.

COMPOSITION OF UNDERWRITING SYNDICATE

Mr. NEHEMKIS. Did not the syndicate, as finally constituted, consist of 4 principal underwriters and 10 secondary underwriters, Mr. Greene?

Mr. GREENE. I know it was four principal; I couldn't give you the exact secondary.

Mr. NEHEMKIS. Will you accept my number subject to your further confirmation?

Mr. GREENE. I will.

Mr. NEHEMKIS. And of the 4 principal underwriters and the 10 secondary underwriters in the syndicate, did you not select 13?

Mr. GREENE. Well, I couldn't testify that I did.

Mr. NEHEMKIS. Recall your previous testimony. You have been developing this with me.

Mr. GREENE. I know I suggested a good many.

Mr. NEHEMKIS. I am afraid I shall have to take you over your previous testimony unless you give me a more positive answer. Suppose I repeat my question. Perhaps that will help you, Mr. Greene. I said, if I recall correctly, of the 4 principal underwriters and the 10 secondary underwriters in the syndicate, did you not select 13?

Mr. GREENE. I would have to see the list. I know I selected those that I testified but I don't remember.

Mr. NEHEMKIS. Then assuming my arithmetic is correct, if your testimony were before you it would add up to 13?

Acting Chairman KING. How did you select, using that term as used by Mr. Nehemkis, just indicate or name them, or go to see them and agree to get them to become part of the syndicate?

Mr. GREENE. They were selected with a view to recognizing past services and also to recognizing what I thought would take care of the market that would exist for these bonds.

Acting Chairman KING. That is to say, to whom did you recommend them, if you made any recommendation?

Mr. GREENE. I recommend those that I thought would be helpful to placing this particular bond, would have some knowledge of the iron-ore business, and in addition those that I thought the company was under some obligation to.

Acting Chairman KING. Were some of them creditors?

Mr. GREENE. Yes.

Mr. O'CONNOR. May I ask, to whom did you recommend?

Mr. GREENE. To Lehman Brothers, the head of the group.

Mr. NEHEMKIS. So that we have this situation, if I may briefly recapitulate, Mr. Greene. You made suggestions to the syndicate manager concerning the selection of various underwriters and as a

result of the various suggestions that were advanced it happened that 13 of your suggestions out of a list of 14 in the ultimate syndicate were accepted, and Mr. Tompkins therefore actually selected but one underwriter, namely Lehman Brothers. Is that correct, sir?

Mr. GREENE. Well, I had no right to select them. I suggested them. I wouldn't say that I selected them.

Mr. NEHEMKIS. Just a moment, sir. I suggest that you attempt to answer my question. If you don't understand it——

Acting Chairman KING (interposing). I think that is an answer.

Mr. NEHEMKIS. I think it is an irrelevant, immaterial and inconsequential answer.

Acting Chairman KING. I don't agree at all. You indicated how they were selected and you indicated that 13 of them, did you? What number? And to whom did you indicate their names?

Mr. GREENE. To one of the partners of Lehman Brothers. I think I should explain that for 33 years I was connected with a trust company and most of that time we operated a bond department. Here was a rather unusual bond that pertained to an industry that isn't particularly well known in Wall Street. Now, I was familiar with a group of distributors of securities that did know something about this and all I was attempting to do as the president of the company, the debtor company, was to assist in the wise distributing of those securities. Now, I didn't have the right to dictate; I merely suggested people that I thought would be good people to be purchasers of the bonds.

Mr. HENDERSON. I think the chairman and counsel didn't suggest there was any impropriety in it. The result was there were four principal underwriters and ten others.

Mr. NEHEMKIS. It is to Mr. Greene's great credit that he was that much interested in this syndicate that he made the suggestions.

Acting Chairman KING. I thought he made the proper selection. Proceed.

Mr. NEHEMKIS. So that as far as you know Lehman Brothers, the manager of the syndicate, did not select any of the underwriters?

Mr. GREENE. I couldn't name any right now.

THE COMMISSION EARNED

Mr. NEHEMKIS. Now, Mr. Greene, will you tell me exactly what Bankers Trust Co. did in this transaction to earn their commission as your agent in organizing and selecting and underwriting a syndicate to float \$24,000,000 of bonds?

Mr. GREENE. Do you mean the commission finally paid?

Mr. NEHEMKIS. That was finally paid.

Mr. GREENE. Well, I will state they were very helpful all the way through in the original deal. They were to secure the purchasers of the entire issue. They took it up with Lehman Brothers and introduced me to that firm. They counseled me about rates of interest, maturities, and so on. In the final financing which we haven't come to, \$16,500,000 of bonds and a \$5,000,000 bank loan, they placed the \$5,000,000 bank loan. A number of times when we were at grips on the negotiations they were helpful not only in their advice to us but they attended the meetings and placed before the investment bankers the situation in a way better than I could. We finally paid them a fee of \$25,000, as I recall it.

Mr. NEHEMKIS. That is correct. Mr. Greene, would you be good enough to glance at three letters which my associate will show you and tell me whether you recognize them as true and correct copies of originals in your possession and custody? One is a letter from yourself to Mr. Belden, dated July 5, 1935; another is a memorandum by you, dated June 13, 1935; and the third is a letter by you, dated December 6, 1935.

Mr. GREENE. I do. May I see this a moment?

Mr. NEHEMKIS. Mr. Greene, I might say I don't intend to examine you about them. These documents, Mr. Chairman, may it please the committee, are offered in evidence.

Acting Chairman KING. Yes. Would one mark do, put them together?

Mr. NEHEMKIS. I think the reporter prefers they be marked separately.

(The letters referred to were marked "Exhibits Nos. 1822 to 1824." "Exhibits Nos. 1822 and 1823" are included in the appendix on pp. 12746 and 12747. "Exhibit No. 1824" appears in full in the text on p. 12462.)

Mr. NEHEMKIS. Mr. Chairman, may the witness be dismissed and may I have leave of the committee to call Mr. Tompkins of the Bankers Trusts Company?

Acting Chairman KING. Before leaving the stand, is there any explanation you care to make in addition to those which you have made to counsel respecting matters which he interrogated you concerning?

Mr. GREENE. I would like to make this statement, if I may, to give the members of the committee a chance to see the reason for this gradual change in the situation. Not only were conditions in the iron-ore industry continually improving, but our condition was getting better all the time. Now, we start in with one deal and as general conditions and our particular conditions improved, this deal shifted around, and in the course of the 10 months between the time of its origination and the consummation it was something very different.

It was an entirely satisfactory matter for the company and inasmuch as the bonds sold readily, remained at a slight market premium above and were called at the full call price and refunded into a lower rate, why I think that as far as the company goes I want to go on record as saying it was an extremely happy and fortunate deal.

Acting Chairman KING. Was the entire amount of \$25,000,000 ultimately paid?

Mr. GREENE. All paid in full. The total issue as finally concluded was \$16,500,000 of bonds and \$5,000,000 bank loan. The bank loan, I believe, was a 5-year loan, paid off in half that time. The other issue was paid in full in February of this year and was reduced to a 3½ percent issue and a 2.16 percent 5-year bank loan.

Acting Chairman KING. Were those bonds guaranteed?

Mr. GREENE. No, sir; and they were on Cleveland-Cliffs alone. The two companies are still separate.

Acting Chairman KING. You may retire.

Mr. HENDERSON. May I ask Mr. Greene while he is here—
(Off the record.)

Mr. NEHEMKIS. May I say on behalf of the committee we are deeply grateful to him? He has inconvenienced himself several times to be available to us. I want to express my thanks in the committee's behalf to him.

Acting Chairman KING. Yes. Is he excused?

(Mr. Greene was excused.)

Mr. NEHEMKIS. Mr. B. A. Tompkins, please take the witness stand.

Acting Chairman KING. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TOMPKINS. I do.

**TESTIMONY OF B. A. TOMPKINS, VICE PRESIDENT, BANKERS
TRUST CO., NEW YORK CITY**

Mr. NEHEMKIS. Mr. Tompkins, will you state your full name and address, please?

Mr. TOMPKINS. B. A. Tompkins, 16 Wall Street.

Mr. NEHEMKIS. Are you not an officer and director of the Bankers Trust Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. What position do you hold?

Mr. TOMPKINS. Vice president.

Mr. NEHEMKIS. Are you not also a director of the following companies—the Coronet Phosphate Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. The Detroit Edison Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. The Otis Elevator Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Babcock & Wilcox Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. International Paper & Power Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. National Aviation Corporation?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. U. S. Leather Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Flintkote Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Southern Kraft Co.?

Mr. TOMPKINS. No.

Mr. NEHEMKIS. You have gone off that?

Mr. TOMPKINS. I don't think I was ever on that.

Mr. NEHEMKIS. Mr. Tompkins, prior to the Banking Act of 1933 did not the Bankers Trust Co. have a security affiliate known as Bankers Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Were you not an officer of the Bankers Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And pursuant to the terms of the Banking Act the Bankers Co. was dissolved, was it not?

Mr. TOMPKINS. Long before the Banking Act was passed.

Mr. NEHEMKIS. I didn't know that; I am glad to have that. And thereafter, that is to say following the dissolution of the affiliate you became an officer of Bankers Trust Co., did you not?

Mr. TOMPKINS. I continued as an officer of the Bankers Trust Co.

Acting CHAIRMAN KING. That is, you have been an officer of the Bankers Trust Co. before the dissolution of the Bankers Co.?

Mr. TOMPKINS. Yes, sir.

Mr. NEHEMKIS. In December of 1935, the Cleveland-Cliffs Iron Co. sold \$16,500,000 first mortgage $4\frac{3}{4}$ percent sinking fund bonds due November, 1950, did they not?

Mr. TOMPKINS. Yes.

Acting Chairman KING. Are you the Mr. Tompkins to whom Mr. Greene referred?

Mr. TOMPKINS. Yes, sir.

Mr. NEHEMKIS. As part of and in addition to this financing, did not Cleveland-Cliffs Iron Co. borrow \$5,000,000 from three banks?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And these were on notes which were due from 1936 through to 1940?

Mr. TOMPKINS. I believe so.

Mr. NEHEMKIS. Of this sum, was not \$2,000,000 borrowed from the Bankers Trust Co.?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And another \$2,000,000 from the First National Bank of Chicago?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And \$1,000,000 from the Cleveland Trust Co.?

Mr. TOMPKINS. That is correct.

Mr. NEHEMKIS. I believe that you have been present in this room during Mr. Greene's testimony, have you not?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Did you hear that testimony?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. You followed it?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Mr. Greene's testimony shows that about the middle of January 1935 Cleveland-Cliffs owed about \$25,000,000 in short-term loans to various banks. That is correct, is it not?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And that included about \$4,000,000 to the Bankers Trust Co.?

Mr. TOMPKINS. Correct.

AGREEMENT OF JANUARY 30, 1935 ¹

Mr. NEHEMKIS. Now, as a result of Mr. Greene's conversation with you, Bankers Trust entered into an agreement with Cleveland-Cliffs Iron Co. whereby the bank was appointed an agent to form an underwriting syndicate to handle the sale of the proposed \$24,000,000 bond issue. Is that correct?

Mr. TOMPKINS. Not necessarily to form an underwriting syndicate. It was to find purchasers for that amount of bonds. It might

¹ This subject is resumed from p. 12425, supra.

have taken the form of an underwriting syndicate, but it wasn't the intention for us to make the sales to institutions.

Acting Chairman KING. That is a different document, is it, from the one which you waved?

Mr. NEHEMKIS. The one I was referring to in my question and to which the witness referred?

Acting Chairman KING. Yes.

Mr. NEHEMKIS. No; that is the seven-page legal document¹ we have been referring to.

Acting Chairman KING. That is the one you still call a contract?

Mr. NEHEMKIS. Yes, sir.

Mr. Tompkins, I show you a letter which purports to be written from White & Case to your attention, dated January 30, 1935. Will you examine this and tell me whether you recognize it as a true and correct copy of an original in your possession?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. Mr. Chairman, I read from this letter.

Acting Chairman KING. Has Mr. Greene gone?

Mr. NEHEMKIS. No; he is here.

Acting Chairman KING. I would like to ask him one question. Excuse the interruption. Come forward, Mr. Greene, I want to ask you one question.

TESTIMONY BY EDWARD B. GREENE, PRESIDENT, CLEVELAND-CLIFFS IRON CO., CLEVELAND, OHIO—Resumed

Acting Chairman KING. You stated that you interlined in that contract, "subject to the approval of the Board." When you went back to the Board, did they approve the instrument?

Mr. GREENE. It is my recollection, Senator, that we were unable to get a quorum, that I discussed this with some of the directors and members of the Executive Committee and we were not able to secure a quorum; and before we could get the quorum, suit was started and the possibility of carrying this out was laid aside, so that while I later reported to the board, everything that was reported to the board was a matter of past history and not as a positive transaction.

Mr. NEHEMKIS. I read from the letter of January 30, 1935 [reading from "Exhibit No. 1825"]:

Enclosed herewith are several final copies of the proposed letter of appointment of Bankers Trust Company as Agent for The Cleveland-Cliffs Iron Company . . . and The Cliffs Corporation.

We have examined the enclosed letter of appointment on your behalf and write to advise you that, in our opinion, the same is in satisfactory form and sufficient for the purposes indicated.

The letter is offered in evidence.

Acting Chairman KING. It may be received.

(The letter referred to was marked "Exhibit No. 1825" and is included in the appendix, on p. 12748.)

¹ "Exhibit No. 1819."

**TESTIMONY OF B. A. TOMPKINS, VICE PRESIDENT, BANKERS
TRUST CO., NEW YORK CITY—Resumed**

Mr. NEHEMKIS. I read to you from paragraph 7, Mr. Tompkins, of the contract of January 30, 1935, to which reference has been previously made [reading from "Exhibit No. 1819"]:

You—

That is to say Bankers Trust Company—

are to use your best efforts to secure a group or syndicate of investors who will purchase the entire issue of said bonds as above stated, or who will enter into an underwriting agreement in form acceptable to us—

That is Cleveland-Cliffs—

for the purchase of the entire issue of said bonds. You shall not be liable under any conditions for your failure to secure the group or syndicate referred to above or for the purchase yourselves or for the underwriting of all or any part of said bonds.

Mr. Greene has previously testified that the latter part of that provision was included in the contract mainly at your request. Does Mr. Greene correctly understand the situation?

Mr. TOMPKINS. I don't recall it exactly, but I know that I would want that clause in any agency contract.

Mr. NEHEMKIS. And Mr. Greene has also testified that whether or not the provision was included was not material to his considerations at the time, he was leaving it pretty much to your judgment, do you recall that line of testimony?

Mr. TOMPKINS. Yes; I recall that.

Mr. NEHEMKIS. Did you understand by the provision in question that Bankers Trust Co. could in fact take a share on original terms of the bonds underwritten, but that the bank was not liable to Cleveland-Cliffs if it didn't take the bonds?

Mr. TOMPKINS. No; I didn't understand that we had a right to participate in the underwriting of the bonds. We did have a right in case the bonds were underwritten by investment bankers; if after that fact they were offered to us for investment, we had a right to buy them.

Mr. NEHEMKIS. Mr. Greene has testified that he was somewhat reluctant to sign the contract at the time, and the testimony in evidence before the committee indicates that he did execute the document mainly upon your insistence. Why did you want him to sign that document prior to his obtaining approval of the board of directors?

Mr. TOMPKINS. The purpose of that document was to set forth clearly what our understanding was, and the type of issue that I was to attempt to sell if I could. I had planned as soon as possible to take this issue of securities to a group of insurance companies, or perhaps to a group of investment bankers, and I wanted two things definitely: First, some evidence of my right to represent the Cleveland-Cliffs Co.; and second, a description of the type of issue that had been given to me to sell if I could.

Mr. NEHEMKIS. And you felt that you would be better fortified to engage in preliminary negotiations if you had a formal instrument in the way of an agency contract?

Mr. TOMPKINS. An agency contract. As far as Mr. Greene and I were concerned, we didn't need any contract at all.

Mr. NEHEMKIS. Now, Bankers Trust Co., pursuant to the contract, was made an agent because, I presume, under the Banking Act, Bankers Trust could not engage at the time in underwriting activities itself?

Mr. TOMPKINS. That is correct.

Mr. NEHEMKIS. Now, examine, if you will, four documents which are now shown to you, and tell me whether you recognize them to be true and correct copies of originals in your possession.

Acting Chairman KING. Before you answer that, do you recognize the Bankers Trust Co. as an agent for the purpose of carrying out the suggestions contained in that so-called contract?

Mr. TOMPKINS. Yes, sir.

Yes; I recognize those.

Mr. NEHEMKIS. May it please the committee, the documents identified by the witness are offered in evidence.

Acting Chairman KING. They may be received.

(The documents referred were marked "Exhibits Nos. 1826 to 1829" and are included in the appendix on pp. 12749-12751.)

Mr. NEHEMKIS. In Mr. Greene's letter to you, Mr. Tompkins, dated February 1, 1935, being Committee's "Exhibit No. 1826," he stated as follows:

We both understand that this is an appointment of the Bankers Trust Company as agent to buy or underwrite a first mortgage and collateral issue of bonds.

You pointed out immediately that Mr. Greene was under a misapprehension in regarding the bank as an underwriter. In committee's "Exhibit No. 1827," your letter of February 4, 1935, you stated as follows:

I have just had your letter of the first. I think that it fairly sets forth our understanding, with this exception. Under the law Bankers Trust Company is prohibited from underwriting. We can, however, act as your agent on a commission basis to find underwriters for the issue.

And again when Mr. Greene wrote to you on May 25, 1935, committee's "Exhibit No. 1828," that—

the Bankers Trust Company are willing to include as equal partners in the deal, two or three firms whose participation would be of advantage to the Cleveland Cliffs Iron Company—

You again were quick to point out that Bankers Trust Co. was not an underwriter.

On May 28, committee's "Exhibit No. 1829," you wrote:

I am a little concerned as to just how to handle the commission of 1% which under the contract we are to receive for our services. Under the law we cannot become a partner in an underwriting and I will therefore have to make it clear to the houses which eventually constitute the underwriting group that we are acting in an agency capacity for a commission.

You felt, did you not, Mr. Tompkins, that you had to make it quite clear to the investment bankers who might be included in the syndicate that Bankers Trust was not an underwriter?

Mr. TOMPKINS. I don't know that I felt I had to make that clear to them, because I could assume that they were familiar with the law. I did have to make clear to them that I was acting for the Cleveland-Cliffs Corporation and that a commission was payable to me.

Mr. NEHEMKIS. You had to make it clear that you were acting as an agent and that was the sole role that you found yourself in and in which you were authorized to act.

Mr. TOMPKINS. That is correct.

Mr. O'CONNELL. Mr. Nehemkis, have you available there the provision in the Banking Act of 1933 which forbids that?

Mr. NEHEMKIS. We have requested one of the gentlemen to find the mimeographed copy that was offered in evidence earlier. If that is not available, in the first day's proceedings before the committee there was offered in evidence the relevant portions.

Mr. O'CONNELL. My memory isn't entirely clear, but I wasn't under the impression that the Banking Act merely prohibited underwriting in terms. My impression is that it referred to engaging to any extent—

Mr. NEHEMKIS (interposing). Or dealing in securities; that is my recollection.

Mr. O'CONNELL. Sometime before we finish with this witness I should like to have it read for my information. It seems to me a little obscure to talk about underwriting if we are referring to the Banking Act of 1933.

Acting Chairman KING. You and your counsel, as you interpreted the Banking Act it did not prevent you or prohibit you from acting as agent for the Cliff Company in finding purchasers for the securities which they had issued?

Mr. TOMPKINS. That is the way I was advised by counsel.

Mr. O'CONNELL. May I understand, have you that in a formal opinion from your counsel? Have you a formal opinion from your counsel to the effect that the activities you were engaging in in this instance would not be in violation of the Banking Act of 1933?

Mr. TOMPKINS. Yes; in the form of a letter of transmittal which accompanied the contract which they drew up.

Mr. O'CONNELL. You mean the letter which says [reading from "Exhibit No. 1825"]:

We have examined the enclosed letter of appointment on your behalf and write to advise you that, in our opinion, the same is in satisfactory form and sufficient for the purposes indicated.

Am I to understand that is in response to an inquiry from you as to whether or not this particular transaction was in violation of the Banking Act of 1933?

Mr. TOMPKINS. I don't know that I made the specific inquiry. I told counsel what the Cleveland-Cliffs Co. had asked us to do, and I asked for a contract or memorandum of agreement to be drawn, and naturally I assumed they would present to me a legal document.

Mr. O'CONNELL. What I am interested in is what consideration you gave to the specific question, which undoubtedly was in the front of your mind, as to whether or not what you were doing was in violation of the Banking Act, and whether or not you asked your lawyers as to whether it was in violation, and whether or not what your lawyers told you is what we have here.

Mr. TOMPKINS. You asked if I had a written document. That is all I have as a written document. I had naturally, upon the passage of the Banking Act, studied it myself and talked about it with counsel. and this contract was in consonance with their advice to me.

Acting Chairman KING. Proceed.

Mr. NEHEMKIS. Mr. Tompkins, in the four letters from which I have read and which are in evidence, reference is made in those let-

ters in various places to the following characterizations of this 7-page document.¹ It is referred to as a "gentlemen's agreement," it is referred to as an "informal contract," and it is referred to as a "contract." Now all of these terms, I take it, do refer to this instrument?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And this instrument was approved by counsel. your counsel?

Mr. TOMPKINS. It was drawn by the counsel of both companies—drawn by my counsel with the counsel of Cleveland-Cliffs.

Mr. NEHEMKIS. Now when Bankers Trust executed this agreement on January 30, 1935, you didn't think that the bank was merely initialing a gentlemen's agreement, did you? You understood that this was at the time a binding and valid agreement, didn't you?

Mr. TOMPKINS. Yes.

SELECTION OF UNDERWRITERS

Mr. NEHEMKIS. You have heard Mr. Greene's testimony in regard to the selection of the underwriters, that of the 14 principal and secondary underwriters, he selected 13. Do you think Mr. Greene accurately understands the role played by Bankers Trust in the selection of the underwriters for the syndicate?

Mr. TOMPKINS. You are dealing now, Mr. Nehemkis, with an operation that wasn't contemplated by that agreement. You are in the second phase of this thing.

Mr. NEHEMKIS. I have leaped a hurdle and I have gone into the second pasture, and you are right with me.

Mr. TOMPKINS. Mr. Greene's testimony on that point, I think, was accurate. He suggested to Lehman Bros., and in some instances to me, the names of houses that he believed would be helpful in this business. I don't think it can be fairly said that he selected them, because the selection was in the last analysis in the hands of Lehman Bros.

Mr. NEHEMKIS. Yes; I will withdraw my use of the term "selection." It is perhaps not quite accurate. He suggested, and the suggestions were followed.

Mr. TOMPKINS. Yes.

Acting Chairman KING. Were there suggestions made that were not followed? Were any other companies suggested other than the 14 companies to whom counsel has referred?

Mr. TOMPKINS. I don't know, Senator, I would doubt it. I really don't know.

Mr. NEHEMKIS. I will have occasion to refer to that later, sir, and you will have a specific answer on it.

Do you recall, Mr. Tompkins, in January of 1935, Hayden, Stone & Co. were negotiating with Mr. W. G. Mather, an important stockholder and director of Cleveland-Cliffs, for the sale of Mr. Mather's holdings of the preferred stock?

Mr. TOMPKINS. No; I don't remember that. I recall that they were negotiating with Mr. Mather for purchase of Cliffs common.

¹ "Exhibit No. 1819."

HAYDEN, STONE & CO.'S REQUEST FOR AN UNDERWRITING PARTICIPATION

Mr. NEHEMKIS. Now, when Hayden, Stone learned of the possibility of a bond issue by the Cleveland-Cliffs and of the contract of January 30, did they not ask you for a participation in the proposed underwriting?

Mr. TOMPKINS. I have forgotten the time, but I know they did ask for an interest in the business.

Mr. NEHEMKIS. Did they ask you?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. I show you a letter from yourself to Mr. Greene, dated February 2, 1935. Will you examine that letter and tell me if you recognize it to be a true and correct copy of an original in your possession and custody?

Mr. TOMPKINS. Yes; I remember this.

Mr. NEHEMKIS. The letter is offered in evidence, may it please the committee.

Acting Chairman KING. It may be received.

(The letter referred to was marked "Exhibit No. 1830" and is included in the appendix on p. 12751.)

Mr. NEHEMKIS. This is a letter from Mr. Tompkins to Mr. Edward Greene, dated February 2, 1935. [Reading from "Exhibit No. 1830":]

This is just to put you up to date on the matter of the purchase of Mr. Mather's stock by Messrs. Hayden Stone et als and our hope that we would be given an opportunity to participate in that purchase.

You will recall that when you told me that Hayden Stone & Co. had been in negotiation on that matter and asked what my point of view would be with reference to ceding that firm an interest in the bond financing, I told you that we would be very happy to offer them an interest. I believe that you advised Mr. Hayden of our attitude on that point. At that time I suggested that I thought it would be very gracious, and helpful to the whole situation, if in return for our offering them an interest in the bond business they offered us an opportunity to join them in their purchase of the stock. It was your feeling that that would make a happy party all around and you expressed that feeling to Mr. Mitchell.

And Mr. Mitchell is Mr. Steele Mitchell at that time at Hayden, Stone?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS [reading further]:

You will recall the conversation which you and I had with Messrs. Mather and Belden—

And Mr. Belden is counsel to Mr. Greene, is he not?

Mr. TOMPKINS. He was.

Mr. NEHEMKIS (continuing):

just before they were leaving for their final talk with Mr. Mitchell. I pointed out to Mr. Mather that I was unwilling to have my request for a participation in the stock purchase in any way interfere with his selling his stock. I merely pointed out that I thought it would be in the interest of all parties concerned if Hayden, Stone & Co. through Mr. Mitchell offered us an opportunity to share in the purchase.

Mr. Mather and Mr. Belden came to my office late that afternoon and advised me that Mr. Mitchell had stated that the two transactions were separate and distinct, that he was prepared to purchase the full 200,000 shares and that any participation which Hayden Stone & Co. might be offered in the bond issue was a separate matter. I thereupon told Mr. Mather and Mr. Belden what I had already said to you, namely that that attitude on the part of Messrs. Hayden Stone & Co. relieved me from any possible obligation to offer them an interest in

the bond purchase. I said that I would immediately telephone Mr. Mitchell and advise him of that fact.

Mr. Tompkins, in this letter from which I have just read, you indicate that you were prepared to offer Hayden, Stone an original position in the bond syndicate in exchange for an original position in their preferred-stock syndicate.

Mr. Tompkins, as agent for Cleveland-Cliffs, to arrange a syndicate for the proposed financing, was it not your duty to find the strongest syndicate, to obtain the best rate of interest and terms for Cleveland-Cliffs?

Mr. TOMPKINS. Exactly.

Mr. NEHEMKIS. But in this letter from which I have read, it would appear, Mr. Tompkins, that you were attempting to use your position as agent for Cleveland-Cliffs to obtain a trade for Bankers Trust in a deal which was of no possible interest to Cleveland-Cliffs. In other words, you were acting as any underwriter might act under similar circumstances. In short, you were expecting an exchange of reciprocal favors.

Mr. TOMPKINS. You say "it would appear," Mr. Nehemkis. You mean by that, that is the way it would appear to you. It doesn't appear that way to me in the slightest.

Mr. NEHEMKIS. That is what you are here to testify about.

Mr. TOMPKINS. You have asked me the question, and the answer to it is "No."

Mr. NEHEMKIS. You think my interpretation is not a correct one?

Mr. TOMPKINS. Yes; and I think I can explain it if you would like to have me.

Mr. NEHEMKIS. I would be very happy to have you.

Acting Chairman KING. Proceed, Mr. Tompkins.

Mr. TOMPKINS. You said you thought it was my function as agent to obtain the best terms I could for my principal, to which I agree. The Cleveland-Cliffs job at that time was not an easy one. The company had lost money, a substantial amount of money, for a number of years. It was not known in the East, it had never come to market for financing. My problem was to try to take the company out of the creditors' committee and arrange to place some \$24,000,000 of its bonds, form a syndicate for that purpose, if necessary.

I had formed in a preliminary way a group which I believed could handle the business, consisting of Lehman Bros., Kuhn, Loeb, and Field, Glore, and at that point it was already apparent to me that while they were interested in the business, they themselves were not sure that it could be done. I wanted, of course, to make the business as attractive to them as I could. When Hayden, Stone applied for an interest in the bond business, if it were done, and there was an opportunity to receive from them a participation in a piece of business which they had at their disposal, which I could use in turn for the benefit of the syndicate that I had formed, it was natural in the interest of my principal to do it, and that is what I sought to do. That interest was not for the Bankers Trust Co.

Mr. NEHEMKIS. I beg your pardon, sir. Do I understand you correctly to have testified that at this time, in February 1935, specifically February 2, 1935, that you had already formed an underwriting group consisting of the three firms I have mentioned?

Mr. TOMPKINS. I am not sure I had called them into a meeting, but I knew the firms I was going to select.

Mr. NEHEMKIS. Isn't that in conflict with Mr. Greene's previous testimony that he suggested three of the four principal underwriters?

Mr. TOMPKINS. We discussed them together and decided that they would be the right people for the business.

Mr. NEHEMKIS. So that you mean to state, then, that after the discussion with Mr. Greene and the passing upon the names, you did the mechanical steps of transmitting that to the group?

Mr. TOMPKINS. I hoped that the service was a little more than mechanical.

Mr. NEHEMKIS. I'm sorry, I didn't intend to infer in the use of the word "mechanical" anything other than carrying out your agency duties.

Mr. TOMPKINS. I mean, Mr. Nehemkis, that we discussed the thing among ourselves and decided which houses, in the light of their experience in this particular type of business, would be the best.

Mr. NEHEMKIS. Now, one other point that I would like you to clear up, if you will, which relates to the same matter. Mr. Greene testified, if I recall correctly, that he transmitted suggestions concerning the ultimate make-up of the syndicate to Lehman Bros. Did you both do that?

Mr. TOMPKINS. That was when it became apparent that I couldn't do what I proposed to do at the outset, that is to place \$24,000,000 of bonds. The property would not stand that issue. What Mr. Greene was testifying to had to do with a later phase when we were not talking in terms of \$24,000,000 of bonds, but Lehman Bros. were going to sell \$16,500,000 of bonds. At that stage in the proceedings, he was having discussions with Lehman Bros. about possible participants in the issue with which I had no concern whatsoever.

Mr. NEHEMKIS. Now, in the letter from which I had previously read, Committee "Exhibit No. 1830," on February 2, 1935, you also informed Mr. Greene as follows:

Today he—

meaning Steele, Mitchell—

telephoned me that he had discussed the matter with his partners—

that is to say, the partners of Hayden, Stone—

and they had decided to offer us no participation in the stock purchase. I said I was sorry but that I would have to accept that and that of course he understood that I had no obligation to offer his firm an interest in the bond matter. He confirmed that that was his understanding.

I regret that Mr. Mitchell and his associates reached that decision, but I could do nothing but accept it. I thought, however, that I should immediately write you and tell you the story.

In other words, Mr. Tompkins, regardless of whether it was good or bad for Cleveland-Cliffs' bond issue, you excluded Hayden, Stone because they had not seen fit to give you, the bank, a participation in their stock purchase?

Mr. TOMPKINS. No, not at all.

Mr. NEHEMKIS. Well, will you explain to me what the meaning of the two paragraphs from which I have just read is, if it doesn't connote the meaning I have just placed upon those two paragraphs?

Mr. TOMPKINS. It means this, that this was in the early part of February.

Mr. NEHEMKIS. February 2, to be exact, is the date of your letter?

Mr. TOMPKINS. Right. That was shortly after the drafting of this informal contract between Cleveland-Cliffs and the Bankers Trust Co.

Mr. NEHEMKIS. That is, January 30, you mean?

Mr. TOMPKINS. That is right, and this whole thing was in a formative stage. I had in my mind to invite Lehman Bros. to head this syndicate and with them would be associated Kuhn, Loeb and Field, Glore; others might later come in, but not necessarily on original terms. I at that time thought that if Hayden, Stone wanted to come in and make a friendly gesture to those other three houses by giving them an interest through me, if you will, that would make for a very happy party, but all I told Mr. Mitchell, when he declined to do that, was, "Then, will you understand I have no obligation from here in to take you into this business?"

Mr. NEHEMKIS. Assuming that you meant what you said in these last two paragraphs, would you be good enough to explain to me how it was possible, under the terms of the Banking Act, for Bankers Trust to participate in a Hayden, Stone syndicate?

Mr. TOMPKINS. That is what I have just pointed out to you; that that interest in the syndicate which you suggested I was taking for Bankers Trust Co. was never contemplated for Bankers Trust Co.

Mr. NEHEMKIS. In other words, you want the committee to understand that in your activity you were merely a conduit by which favors could be exchanged and other arrangements effected which would benefit various parties to the syndicate?

Mr. TOMPKINS. I wouldn't call it the exchange of favors. I would say that I was acting as an agent for the Cleveland-Cliffs Corporation, doing the best I could to get the best terms for them possible.

Mr. NEHEMKIS. Well, now, I want to read back to you once again, if I may, those last two paragraphs. I have identified the personalities involved in here, and I won't do it this time. [Reading from "Exhibit No. 1830":]

Today he telephoned me that he had discussed the matter with his partners and they had decided to offer us no participation in the stock purchase. I said that I was sorry but that I would have to accept that and that of course he understood that I had no obligation to offer his firm an interest in the bond matter.

Now, in that statement, assuming that Hayden, Stone had offered you a participation under the proposal then contemplated, you would have been obligated to bring Hayden, Stone into the deal on original terms, would you not?

Mr. TOMPKINS. With the agreement of the other members of that syndicate.

Mr. NEHEMKIS. Yes. Assuming they all agreed. Now, when you made that suggestion to Hayden, Stone, for whom were you acting; for the bank or for Cleveland-Cliffs Iron Co.?

Mr. TOMPKINS. Cleveland-Cliffs; they were my principal.

Mr. NEHEMKIS. But it was of no consequence, was it, to Cleveland-Cliffs whether or not Hayden, Stone offered you an exchange in their stock deal?

Mr. TOMPKINS. Decidedly, because that was to be for the benefit of the other participants in the syndicate; not for the Bankers Trust Co. We couldn't have taken it under the law, anyway.

Mr. NEHEMKIS. Then why were you making these suggestions, if upon your own admission you could not have taken it under the law?

Mr. TOMPKINS. Because I was doing it for the account of the participants in the syndicate.

Mr. NEHEMKIS. Now I want to read a bit further, if I may. [Reading further from "Exhibit No. 1830":]

He—

Meaning Steele Mitchell—

confirmed that that was his understanding.

I regret that Mr. Mitchell and his associates reached that decision, but I could do nothing but accept it. I thought, however, that I should immediately write you and tell you the story.

Now if I may briefly recapitulate, at the time that Hayden, Stone was interested in the stock transaction and you offered them a participation on original terms in the deal that you were handling as agent, you were acting, you wish the committee to understand, in behalf—

Mr. TOMPKINS (interposing). I hadn't offered them an interest.

Mr. NEHEMKIS. Beg pardon?

Mr. TOMPKINS. You said I had offered them an interest. I hadn't offered them an interest.

Mr. NEHEMKIS. You had not offered Hayden, Stone an interest on original terms in the Cleveland-Cliffs transaction in exchange for participation by the bank in the Hayden, Stone stock deal?

Mr. TOMPKINS. Not up until that time they were never offered an interest in it.

Mr. NEHEMKIS. This letter is dated February 2, and that is the purpose of your letter of transmittal to Mr. Greene. You wrote in the second paragraph of this letter as follows, Mr. Tompkins. [Reading further from "Exhibit No. 1830":]

You will recall that when you told me that Hayden Stone & Co. had been in negotiation on that matter and asked what my point of view would be with reference to ceding that firm an interest in the bond financing, I told you that we would be very happy to offer them an interest.

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS (continuing):

I believe that you advised Mr. Hayden of our attitude on that point. At that time I suggested that I thought it would be very gracious, and helpful to the whole situation, if in return for our offering them an interest in the bond business they offered us an opportunity to join them in their purchase of the stock.

Now that is precisely the way investment bankers talk when they negotiate a deal. That has been the whole tenor of the testimony before this committee which has been received here for the past three weeks or so. Now I repeat again, because I think this is very important, Mr. Tompkins, do you want this committee to understand that at the time you were writing to Mr. Greene, for whom you were authorized to act only as agent, that in this particular transaction you were not acting at the same time for the Bankers Trust Co.?

Mr. TOMPKINS. I certainly do want the committee to understand

Acting Chairman KING. Did the Bankers Trust Co. have any interest in the activities which you were carrying on as agent for Mr. Greene's company?

Mr. TOMPKINS. I don't think I understand, Senator.

Acting Chairman KING. Did the Bankers Trust Co. have anything to do with the work of the syndicate, the placing of those securities which were being issued, or the carrying out of that loan which was made to consolidate those debts which aggregated \$25,000,000?

Mr. TOMPKINS. After the bonds were sold to the public there was a bank loan of \$5,000,000 that had to be arranged and in that we participated.

Mr. HENDERSON. May I ask a question here, Mr. Chairman, if you are through?

Acting Chairman KING. Yes.

Mr. HENDERSON. I understand that your response to counsel's question was that you were trying to get this participation in the common stock in order to help carry the deal, and that you were acting as agent for Cleveland Cliffs and not for Bankers Trust?

Mr. TOMPKINS. Yes; that is correct.

Mr. HENDERSON. But the negotiations were by yourself, representing Bankers Trust? You were not acting in an individual capacity as agent, were you?

Mr. TOMPKINS. No; I was acting as an officer of my bank; the bank was acting as an agent.

Mr. HENDERSON. Did you submit the question of the legality of that action to counsel, also?

Mr. TOMPKINS. Which particular action?

Mr. HENDERSON. This attempt to negotiate a reciprocal obligation with Hayden, Stone's transaction.

Mr. TOMPKINS. No; I never discussed it with anyone.

MEANING OF UNDERWRITING AND THE BANKING ACT OF 1933

Mr. HENDERSON. The first paragraph of the Banking Act says:

After one year from the date of the enactment of this Act, no member bank shall be affiliated in any manner described in Section 2b hereof with any corporation, association, business trust, or any other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities.¹

Do I understand that you take the position that the Bankers Trust as agent could do the thing that it was not authorized to do by the Banking Act?

Mr. TOMPKINS. No; I don't take that position. I have always assumed that the bank, although excluded from underwriting, could act as an agent for the account of another.

Mr. HENDERSON. And acting as an agent to perform all the acts that are ordinarily done by an underwriter, except that of taking the risk?

Mr. TOMPKINS. No; my conception of my agency responsibility was to get as good terms as I could for my principal. I had to do a lot of things to accomplish that.

¹ The relevant provisions of the Banking Act of 1933 are set forth in "Exhibit No. 1530," Hearings, Part 22, p. 11607.

Mr. HENDERSON. And in doing that you felt that you were within your legal rights to try to get this reciprocal obligation for the common stock?

Mr. TOMPKINS. Yes; I felt I was trying to form a syndicate as successfully as I could, and that if this house of Hayden, Stone had a piece of business which might be attractive to the other houses that I had in mind, as I said in that letter, it would make a very happy party.

Mr. HENDERSON. Why wasn't that something which Lehman Brothers would want? You had already at this time, had you not, selected Lehman Brothers to manage the deal?

Mr. TOMPKINS. If it were ever done; yes; but we were just starting then, Mr. Henderson.

Mr. HENDERSON. I know, but what I would like to get at—I am not so much interested in this single transaction, as you probably perceive—in bringing out an issue by an underwriter there are a number of steps to be performed; there are the various conversations with the issuers, sometimes leading on the part of the underwriter to the engaging of counsel, engineers, appraisers, and accountants. Now, in your opinion, can a bank, acting as agent, go that far?

Mr. TOMPKINS. No; I think that agency means what the term implies. In this case it was just as if we were given an order to sell \$24,000,000 of bonds for the account of Cleveland-Cliffs for a commission.

Mr. HENDERSON. Well, that is all right if you were given an order by Cleveland-Cliffs to underwrite. Very plainly, in your opinion, you couldn't do it?

Mr. TOMPKINS. No; that would be unlawful.

Mr. HENDERSON. But what I am getting at, where is the line drawn? What are the things in this contract? The thing which you excluded in the written terms was the assumption of the responsibility, and in the succeeding letters you were careful to make it clear that you were acting as agent?

Mr. TOMPKINS. Yes.

Mr. HENDERSON. Now, is there anything else in the transaction of the ordinary underwriting of an issue that a bank can't do, acting as agent? Do you think of anything?

Mr. TOMPKINS. I think the bank could, in the first place, get together, say, a group of insurance companies and try to get them to buy the bonds. That was my original intention here. That wasn't possible.

Then the next thing it can do is to get together a group of houses, and it wants to make that group as strong as it can, of course.

Mr. HENDERSON. And if the group takes the issue the bank then buys some of the bonds?

Mr. TOMPKINS. After the issue; yes.

Mr. HENDERSON. But they can buy them from the underwriter?

Mr. TOMPKINS. Buy them from the underwriter, if he will sell them to him.

Mr. HENDERSON. What other things can a bank acting as agent do? Let me suggest one you have indicated here. It can do the thing which an underwriter ordinarily tries to do, or sometimes tries to do—there has been some denial of testimony here—to get reciprocal obligations which will sweeten the contract, or in your terminology, I think it was, to make it a happier party. Now, the bank can do those things can it not?

Mr. TOMPKINS. I think the bank could form a syndicate for the purpose of selling the bonds, and in the formation of that syndicate the bank would be doing nothing improper if it made whatever moves were necessary to get a strong syndicate.

Mr. HENDERSON. And the bank could select the manager and also the subunderwriters?

Mr. TOMPKINS. Well, it certainly could select the manager.

Mr. HENDERSON. Could it select the subunderwriters?

Mr. TOMPKINS. I should think after it had its basic syndicate as we did in this case of four strong houses, from there on the job was up to the syndicate manager.

Mr. HENDERSON. Do you think it could go further and indicate any of the distributors that might take part in the issue?

Mr. TOMPKINS. Oh, I think it could properly suggest to the syndicate manager that this certain house, Smith, Jones & Co., be given an interest in the business.

Mr. HENDERSON. So it could act in a cooperative capacity with the underwriters in determining what the distribution line should be?

Mr. TOMPKINS. No; not that. I meant that just as a bank would do for any of its clients in any of its business, it would suggest to an underwriter that it would like to have such and such a name included. I don't think that after it passed—after the formation of the syndicate and there is a manager selected, then I think the bank steps out of the picture.

Mr. HENDERSON. How about a stabilizing operation?

Mr. TOMPKINS. The bank can't participate in that.

Mr. HENDERSON. Can't participate under the terms of the '33 act or of the Exchange Acts?

Mr. TOMPKINS. I think that certainly under the Banking Act it couldn't.

Mr. HENDERSON. Well, it can take a fee as an agent for performing all these things?

Mr. TOMPKINS. Not all of them, Mr. Commissioner. I think it can take a fee for finding the buyer for an issue.

Mr. HENDERSON. It can get a finder's fee? In this case it wasn't a matter of finding; the business walked into the office, in a way, didn't it? I mean isn't that—

Mr. TOMPKINS. I don't think a finder's fee would accurately define what this was.

Mr. HENDERSON. But it could take a finder's fee, you think?

Mr. TOMPKINS. I don't know; I have never had that experience.

Mr. HENDERSON. In your experience no one of your clients has said, "We will pay you a fee"? Or you haven't had the experience in which you have said to a banking house, "One of our accounts is in need of financing and we think you ought to look into the business" and if they get the business, pay you a fee? You haven't had any experience like that?

Mr. TOMPKINS. We have done that on several occasions, but without suggesting any fee for it; just service to the depositor.

Mr. HENDERSON. Let me ask you this, before the manager of the syndicate is selected, can the bank, acting as agent, suggest the secondary group?

Mr. TOMPKINS. It could if it were asked to by the manager of the syndicate.

Mr. HENDERSON. Well, could it, before the manager was selected, pick out the secondary group and then after it selected the manager say, "This is the secondary group"?

Mr. TOMPKINS. Well, I think that it would perhaps be going beyond what it was asked to do by its principal if it did more than just get the first group.

AUTHORITY TO SELECT THE UNDERWRITING SYNDICATE

Mr. HENDERSON. But this seven-page document¹ that Mr. Nehemkis was waving at Senator King said, I understand, that you would use your best efforts. Now, would "best efforts" to you indicate the secondary group? Do you think that the bank acting as agent would select them even before they had determined on the principal underwriter?

Mr. TOMPKINS. I think that it would have used its best efforts successfully to have gotten the commitment group, the original group; then the question of the secondary group for distribution would be up to the syndicate manager.

Mr. HENDERSON. Now, in this negotiation you had with Hayden, Stone, you were asking this reciprocal obligation as a quid pro quo for letting them in on original terms, not in the secondary group.

Mr. TOMPKINS. For suggesting them to Lehman Bros. who had already been selected as the head. I couldn't dictate the inclusion or exclusion of Hayden, Stone.

Mr. HENDERSON. You say you couldn't, maybe by that seven-page document, but you did. The very letter² that you wrote to Mr. Greene recites that you did, and then they understood that they were being excluded because they wouldn't come across with the common stock.

Mr. TOMPKINS. That letter showed that I would be under no obligation to them to offer them an interest.

Mr. HENDERSON. Obligation as an agent?

Mr. TOMPKINS. As an agent.

Mr. HENDERSON. Acting for C. C. I.

Mr. TOMPKINS. Yes. If, however, Lehman Bros. and Kuhn, Loeb for reasons of their own, or the corporation, wanted them in the business, and they were prepared to make a commitment, of course they could come in.

Mr. HENDERSON. Yes; but did you discuss with Lehman Bros. at that time this reciprocal obligation?

Mr. TOMPKINS. No, not at all; I had nothing to discuss.

Mr. HENDERSON. Well, you did have something to discuss in the way of getting this reciprocal obligation, because when Mather was going over it you told him what you thought ought to be the terms on which they came in, and they came back and said the two transactions were separate.

Mr. TOMPKINS. That is right.

Mr. HENDERSON. Then you went further and talked a bit with him and said, "You take this attitude, you are not in the bond issue."

Mr. TOMPKINS. But you asked if I discussed it with Lehman.

¹ "Exhibit No. 1819."

² "Exhibit No. 1830."

Mr. HENDERSON. Yes. You said you had nothing to discuss, but you were discussing this particular item, and at the same time you had selected Lehman.

Mr. TOMPKINS. I had nothing to discuss with Lehman Bros. because there was no stock interest to offer to Lehman Bros. The matter was closed.

Mr. NEHEMKIS. The point at issue, however, Mr. Tompkins, is that the manager was very much concerned, or should have been very much concerned, as to who the manager's associates were, and you might have been in a position of having brought in a house that might not have been acceptable to the manager. Such, of course, was not the case, but that is the logic of your position. That is what the Commissioner, I believe, is asking about.

Mr. TOMPKINS. I don't know that I follow that.

Mr. HENDERSON. You had already selected Lehman, had you not?

Mr. TOMPKINS. To head it up, that is right.

Mr. HENDERSON. And now you were, as agent, going into a negotiation which admittedly is usually undertaken by the principal for the reciprocal obligation. If you had gotten that, then Hayden, Stone would have been in whether Lehman wanted it or not.

Mr. TOMPKINS. Oh, no; not at all. It was entirely up to them.

Mr. HENDERSON. I thought you had the right to negotiate there, you were acting as agent and presumably you could make a commitment.

Mr. TOMPKINS. Our job as agent was to form a group sufficiently strong to make a commitment.

Mr. HENDERSON. You take the position, then, that if you had gone through with Hayden, Stone and they had given you the common stock participation, Lehman Bros. could have thrown it down?

Mr. TOMPKINS. Of course, because it was for them to accept, not me; it wasn't for the Bankers Trust Co. I would have gone, in that event, Mr. Commissioner, to Lehman Bros., Kuhn, Loeb, Field, Glorie, and said, "Hayden, Stone & Co. would like to come in this business and they are doing a piece of common-stock business and there is participation in that which will be available to you all if you want it." Now they may have said, "Well, we are not interested in their common-stock deal, nor do we want them in this business."

Mr. O'CONNELL. What about Cleveland-Cliffs? Could Cleveland-Cliffs have required the syndicate manager to bring in this other firm?

Mr. TOMPKINS. As a practical matter they could have, because if they made the request it was a responsible house.

Mr. O'CONNELL. As an equally practical matter you were in the same position as Cleveland-Cliffs, were you not? You were their agent?

Mr. TOMPKINS. I was acting as their agent.

Mr. O'CONNELL. Could you not have done anything Cleveland-Cliffs could have done, as a practical matter, as far as dictating who could have been in the syndicate?

Mr. TOMPKINS. I think so, in the light of the names of the houses involved.

Mr. O'CONNELL. It doesn't seem to me that your position is distinguishable from that of Cleveland-Cliffs. You operated as their agent with power to act; you could dictate who would be in the

syndicate. You dictated the manager, I mean you selected the manager.

Mr. TOMPKINS. I selected the manager. You have to have a place to start from. But as a matter of fact, after the selection of a manager and in the formation of syndicates it isn't a matter of dictation, it is a matter of mutual agreement. You are dealing with responsible houses.

Acting Chairman KING. The manager of Lehman Bros. could have rejected any person participating in the syndicate if they desired to.

Mr. TOMPKINS. Oh, yes.

Mr. HENDERSON. But you as an agent could have rejected Lehman Bros., too, could you not? You were the top man in this thing.

Mr. TOMPKINS. I suppose I could have, theoretically.

Mr. HENDERSON. You were the one who had the contract.

Mr. TOMPKINS. Yes; but after having invited Lehman Bros. to head up this syndicate and told them of my contractual relationship with Cleveland-Cliffs and discussed the other members which I had in mind I can't see at that point that I could very well have dropped it.

Mr. HENDERSON. Well, speaking legally you could.

Mr. TOMPKINS. Legally I could have.

Mr. HENDERSON. Yes; that is what I mean.

Mr. TOMPKINS. But practically, no; I don't think I would have.

Acting Chairman KING. If you had suggested someone that Lehman Bros. didn't want, they might have refused to take charge?

Mr. TOMPKINS. Oh, absolutely.

Acting Chairman KING. In other words, your suggestion that A, B, or C might be included in the syndicate didn't compel them to accept them, and if you had made the request or if Mr. Greene had made the request that they take A, B, or C into the syndicate and Lehman Bros. had said "no," why, perhaps they might have withdrawn the commitment to Lehman Bros. if it hadn't been reduced to writing or hadn't become a concrete contract; nevertheless, Lehman Bros. could have rejected their suggestions, and they could have been bound by Lehman Bros.' action in the matter.

Mr. TOMPKINS. That is right.

Mr. HENDERSON. Let me ask you this: Do the officers of Bankers Trust sit in on discussions with underwriters and issuers or depositors of Bankers Trust?

Mr. TOMPKINS. We sit in with the borrowers, with the issuer.

Mr. HENDERSON. You sit in as banker to the borrower.

Mr. TOMPKINS. That is right.

Mr. HENDERSON. In negotiations with the underwriters?

Mr. TOMPKINS. Not necessarily; not always in negotiations.

Mr. HENDERSON. But in discussion.

Mr. TOMPKINS. Yes.

Mr. HENDERSON. Did you take a fee for that?

Mr. TOMPKINS. No; this is the only instance I know of where a fee was even suggested.

Mr. HENDERSON. But if this long series of things we have been through is correct, there is nothing to prevent, legally, a bank from engaging in a large number of the activities which are ordinarily the function of an underwriter.

Mr. TOMPKINS. Yes. I have never seen it work in practice—

Mr. HENDERSON (interposing). No; because of the risk-taking in that respect. The thing which an issuer wants is that guarantee, of course, to buy.

Mr. TOMPKINS. If the issuer is a depositor of the bank he certainly has the right to come to the bank and ask advice on a proposed issue, and that we give him.

Acting Chairman KING. The committee will stand adjourned until 2:30.

(Whereupon, at 12:40 p. m., the committee recessed until 2:30 o'clock p. m. of the same day.)

AFTERNOON SESSION

At 2:30 p. m. the committee resumed its session, after the noon recess.

Acting Chairman HENDERSON. The committee will be in order.

Mr. NEHEMKIS. Mr. Tompkins, will you please resume the witness stand?

No action was taken, Mr. Tompkins, with regard to the proposed bond issue between February 7 and May 3 because as Mr. Greene testified this morning the suit brought by the Department of Justice to restrain the merger of Republic Steel and Corrigan-McKinney; is that your recollection, sir?

Mr. TOMPKINS. Yes; I think we were doing our analytical work on the property, and so on.

Mr. HENDERSON. Off the record. (Making inquiry.)

Mr. NEHEMKIS. After the decision had been reached in this case negotiations were once more resumed, were they not?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. And by June 6 the underwriters had been selected?

Mr. TOMPKINS. I would say about that time.

Mr. NEHEMKIS. And the underwriters were Lehman Bros., Field, Glore, Kuhn, Loeb, and Hayden, Stone?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. I show you a letter by yourself dated June 6, 1935. Will you be good enough to examine this document and tell me whether you recognize it as a true and correct copy of an original in your possession and custody, Mr. Tompkins?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. The document as identified by the witness is offered in evidence, may it please the committee.

Acting Chairman O'CONNELL. The document will be received.

(The letter referred to was marked "Exhibit No. 1831" and appears in the appendix on p. 12752.)

Mr. NEHEMKIS. Now did not the four investment banking firms meet in your office on or about June 28 to agree upon the terms of the bond issue?

Mr. TOMPKINS. They met in my office, but I don't think at that time set the terms at all.

DISCUSSION OF UNDERWRITING TERMS, JUNE 28, 1935

Mr. NEHEMKIS. I show you a letter dated July 9, 1935, from Mr. Lewis Strauss, addressed to you, together with a memorandum by

Mr. Strauss. Will you be good enough to examine it and tell me whether you recognize it as a true copy?

Mr. TOMPKINS. Yes; I do.

Mr. NEHEMKIS. May it please the committee, the two documents identified by the witness are offered in evidence.

Acting Chairman O'CONNELL. They will be received.

(The documents referred to were marked "Exhibits Nos. 1832 and 1833" and are included in the appendix on p. 12753.)

Mr. NEHEMKIS. I read to you from the last paragraph of the letter dated July 9, 1935, from Mr. Strauss to yourself [reading from "Exhibit No. 1832"]:

As you may recall I made a memorandum at our last meeting in your office of my understanding of the agreement which we had reached and read it to the group. It is now a part of my office record and I am enclosing a copy of it herewith.

And then there is attached to the document identified by you, and now in evidence, the following memorandum, prepared by Lewis Strauss. For the sake of the record, Mr. Lewis Strauss is a partner of Kuhn, Loeb & Co.?

Mr. TOMPKINS. Correct.

Mr. NEHEMKIS. The memorandum reads as follows [reading from "Exhibit No. 1833—"]:

The following memorandum of conclusions reached at meeting in the office of Mr. B. A. Tompkins of Bankers Trust Company on June 28, 1935—

That was the date, you recall, I asked you about a moment ago—

jotted down by me at the time and read to those present, being—Messrs. B. A. Tompkins, Robert Lehman, Monroe Gutman, Russell Forgan, John Fennelly, Richard Morris, Lewis L. Strauss.

"A group is formed to do financing for a company proposed to be organized by the consolidation of Cliffs Corporation and Cleveland-Cliffs Company, to consist of Messrs. Lehman Brothers, Field, Glore & Co., Hayden, Stone & Co., and Kuhn, Loeb & Co., each party to the group to have an equal interest of 25%; if any other parties are admitted to the business they are to receive participations made up pro-rata from the shares of the participants and are to be admitted only upon general concurrence. Lehman Brothers are to manage the initial business; subsequent leadership is to rotate: Kuhn, Loeb & Co. to be silent members of the group, that is to say their name is to appear where legally required in the Registration Statement and in the body of the Prospectus (not the front page of the Prospectus or advertising) and on the last line in each instance and in no other documents without their consent.

"Lehman Brothers and the Bankers Trust Company are to receive under the agreement with Mr. Greene, $\frac{1}{2}\%$ each from the Company—not to be a cost to the business—but Lehman Brothers' $\frac{1}{2}\%$ may be in the nature of a management fee if legally necessary to so arrange it. No precedent of management fee is to be applicable to subsequent business.

"The stock collateral when, as and if liquidated is to be handled by the group as a whole."

Initialed "L. L. S.," being the initials of Lewis L. Strauss.
(Senator King took the chair.)

Mr. NEHEMKIS. According to this memorandum, Mr. Tompkins, you had agreed to divide your 1 percent agent's fee with Lehman Brothers, the manager of the syndicate. Is that correct?

Mr. TOMPKINS. It is and isn't.

Mr. NEHEMKIS. In what respect isn't it correct?

Mr. TOMPKINS. In this respect: By that time it had become obvious that we could not do a first-mortgage and collateral-trust issue, that

we would have to do two issues, and that I was not going to be able to make the arrangement that was contemplated in the January contract. I, therefore, agreed with Mr. Greene that my commission should be reduced by 50 percent, and he in turn agreed to pay half of 1 percent to Lehman Brothers as managers of the syndicate. I wasn't splitting my fee; I was taking a lower fee and he was making another arrangement.

Mr. NEHEMKIS. This morning there was marked for identification committee "Exhibit No. 1823." I want to read to you from a memorandum written by Mr. Greene on June 13, 1935 [reading from "Exhibit No. 1823"]:

Mr. Tompkins then went on to state that they had discussed the matter of a 1% commission and had agreed to this arrangement: that the Bankers Trust Company would keep $\frac{1}{2}\%$ for themselves out of which they would pay White & Case's bill up to the present time and also White & Case or any other firm who did the legal work drawing the issue and protecting the interests of the Bankers Trust Company as trustee of the bond issue. He stated—

Referring to Mr. Tompkins—

that the other $\frac{1}{2}\%$ would be paid to Lehman Bros. for their assuming the leadership of the purchasing group.

Now, just so that the record may be thoroughly clear, is it a fact that that the total 1 percent was shared by you with Lehman Brothers?

Mr. TOMPKINS. No; it was a fact that the Cleveland Cliffs Co. paid me a half and paid Lehman Brothers a half; I didn't share it with Lehman Brothers. Perhaps we both mean the same thing.

Mr. NEHEMKIS. I rather think we do.

POSITION OF BANKERS TRUST UNDER AGREEMENT OF JUNE 28, 1935

Mr. NEHEMKIS. Would this be a fair conclusion for me to draw from the memorandum embodying the agreement reached by the investment banking firms: that the Bankers Trust, having started out as an agent, in order to avoid conflict with the Banking Act, ended up by becoming co-manager of an underwriting syndicate, the very thing the law sought to prohibit?

Mr. TOMPKINS. No; that would not be a correct conclusion.

Mr. NEHEMKIS. Then I ask you to state wherein the conclusion is unsound.

Mr. TOMPKINS. Because the Bankers Trust Co. never departed from its agency position; it never had a dollar of commitment in this situation, and never proposed to take one unless it might, after the bond issue had been made into a public offering, elect to buy some bonds.

Mr. NEHEMKIS. Mr. Tompkins, I recall to your attention, if I may, the following statement by Mr. Strauss, who in this memorandum submitted to you apparently embodied the general understanding reached by the banking group [reading from "Exhibit No. 1833"]:

Lehman Brothers and the Bankers Trust Co. are to receive under the agreement with Mr. Greene, $\frac{1}{2}\%$ each from the Company—not to be a cost to the business—but Lehman Brothers' $\frac{1}{2}\%$ may be in the nature of a management fee if legally necessary to so arrange it.

Now, if you weren't in effect and for all practical purposes acting, whether consciously or unconsciously—don't misunderstand, I do not allege any impropriety on your part as co-manager of this issue, why

was it necessary for Mr. Lewis Strauss, who I think is a very careful draftsman in these matters, to state—

but Lehman Brothers' $\frac{1}{2}\%$ may be in the nature of a management fee if legally necessary to so arrange it.

Mr. TOMPKINS. I don't know what was in Mr. Strauss' mind, but what that memorandum meant to me was that a syndicate having been formed and a manager having been selected, that manager was entitled to a management fee, that he was to get from the company, and it was to be his to the exclusion of the other participants. It had no relationship whatsoever to my job, the job I had done in forming the syndicate, because once that was formed then it had to be managed, and the management of a syndicate involves getting participants setting up selling groups, arranging concessions. I had nothing to do with that.

Mr. NEHEMKIS. I think I understand that and I think the committee does. May I ask you to recall the concluding paragraph of Mr. Strauss' letter to you, in which he said as follows [reading from "Exhibit No. 1832"]:

As you may recall, I made a memorandum at our last meeting in your office of my understanding of the agreement which we had reached and read it to the group.

The group consisted of yourself, Mr. Robert Lehman, Mr. Monroe Gutman, Mr. Russell Forgan, Mr. John Fennelly, Mr. Richard Morris, Mr. Lewis L. Strauss. I think it is a fair inference, is it not, Mr. Tompkins, that had there been any dissent on the part of any of those members Mr. Strauss would not have been at liberty to send you a copy of his office memorandum. That is a fair interpretation, is it not?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. Now, will you explain to me, if you can, why it was necessary for Mr. Strauss to insert that peculiar language—

but Lehman Brothers' $\frac{1}{2}\%$ may be in the nature of a management fee if legally necessary to so arrange it.

Mr. TOMPKINS. That I can't answer, I don't know why he put that in.

Mr. HENDERSON. Mr. Tompkins, taken together with Mr. Greene's understanding of this 1 percent that was being split, is the inference a natural one that what was being done was that either the agency fee was being split or the management fee was being split? It is that 1 percent contained in your original contract that was being divided, was it not?

Mr. TOMPKINS. Yes; the 1 percent, so far as the company was concerned, was going to be paid one-half to me and one-half to somebody else. There was a reason for that, which was obvious because it was already apparent—it had been long before June—that we couldn't perform under that contract; that this property wouldn't stand \$24,000,000 in bonds; that I couldn't take them and sell them to an insurance company or a group of insurance companies.

We had to adopt an entirely different scheme, and we discussed 10 or 12 before we reached this final one, and I didn't want the existence of that contract or the requirement on the part of the company that paid me 1 percent, or any other amount, to interfere with the conclusion of that business. When the time came that Lehman Brothers felt

if they were going to act as manager, they wanted a special fee for that, and Mr. Greene was prepared to pay that; I said all right.

Mr. HENDERSON. Pay it out of your 1 percent?

Mr. TOMPKINS. If you view it in that way, it was out of that 1 percent.

Mr. HENDERSON. According to Mr. Strauss' memorandum,¹ the only reason they called it a management fee was that it was legally necessary so to arrange it. That would mean that either you had been performing some of the managerial duties imposed on an underwriter or else Lehman, because you say he could not arrange it within the terms you expected so you couldn't complete your agency, was getting a half percent for taking over some of the agency's responsibility.

Mr. TOMPKINS. No; I don't think that follows, Mr. Commissioner. A syndicate manager doesn't start to work until the syndicate is formed. That half of 1 percent to Lehman Brothers was to compensate them in the management position.

Mr. NEHEMKIS. Do I understand by that—

Mr. HENDERSON (interposing). Pardon me, I think we went through this morning the things which a manager does, and it seemed to me that the agent in your case was doing some of them. Independent of the legal niceties in this particular case, and whether a management fee was being split or an agency fee was being split, it is evident that if you wanted to call it one thing you could really have a bank getting an overwriting fee. Isn't that correct?

Mr. TOMPKINS. No; the bank would still be getting a fee for acting as an agent.

Mr. HENDERSON. Then you can call it an agent; that is, a bank can constitute itself an agent. Let's take the case of an issue. If a bank has a customer, a depositor, who needs some financing, in the old days you would take it over in the other department—in your case you could take it over to the company—and legally you could underwrite the issue, and no questions would be raised at all. Now, assuming there is a continued close relationship on the banking end, the same circumstances present themselves; on account of the age-old relationship to the company, the bank performs almost all the functions that it used to in the old days.

If it is willing to take an agency contract, it could get what in effect is a split in the management fee, could it not, and still be within its legal terms?

Mr. TOMPKINS. No; because the syndicate manager would require, as Lehman Brothers in this instance, full pay for their services as manager.

Mr. HENDERSON. They might get their full pay, because the management fee differs, as I have had occasion to note here recently; sometimes there was no management fee and sometimes it is a quarter, sometimes it is an eighth, and sometimes it is three-eighths. It might reasonably be, in troublesome issues, even higher. But I am assuming a good old rock-bound case, where the company was not put to a tremendous amount of expense, where the bank itself—well, maybe all they did was pick out the historical underwriters and take it over to an underwriting house and say: "The company will stand for an

¹ "Exhibit No. 1833."

overwriting here of a quarter of a per cent. We have done all the work, we will take an agency contract in this thing, and we will take one-half that quarter per cent management fee."

That would be perfectly possible, would it not?

Mr. TOMPKINS. That could be done. Of course, it isn't done.

Mr. NEHEMKIS. It was done in the case we are discussing.

Mr. TOMPKINS. No; but you mustn't confuse that with the type of case that Mr. Henderson was discussing. He said a good old rock-bound company.

Mr. HENDERSON. Take the same set of circumstances. Suppose the bank did all the work; suppose it said, "Give us the trust business, and give us the payment business, and give us a deposit with a compensating balance for our trouble." That would be perfectly legal; would it not?

Mr. TOMPKINS. That is right.

Mr. HENDERSON. And isn't that the kind of thing that happens nowadays, rather than a splitting of a management or agency fee?

Mr. TOMPKINS. This is the only case, Mr. Commissioner, that I have heard of where an agency arrangement was ever worked out.

Mr. HENDERSON. But more likely it would be on the other basis, that is, the usual banking emoluments that come with an issuance.

Mr. TOMPKINS. Trusteeship and compensating balances, and so on. That is correct.

Mr. NEHEMKIS. Now, the agreement between the underwriters, Mr. Tompkins, according to the conference memorandum sent to you by Mr. Strauss, contained two major points. First, that that group consisting of the four houses previously mentioned was to handle all future financing for Cleveland-Cliffs; and the second point was that any of those four underwriters had the power to "blackball" the admission to the group of any new underwriters.

Mr. TOMPKINS. That is a rather strong statement. This is not a club.

Mr. NEHEMKIS. I shall read you the exact phrase if you hesitate about the word "blackball."

Mr. HENDERSON. I agree with the witness.

Mr. NEHEMKIS. I am not so sure, Mr. Commissioner.

The statement¹ reads that participants "are to be admitted only upon general concurrence." Now, if I understand that correctly, it means that a new members of the group could only be admitted after those four houses approved and any one of the four by disapproving could exclude any other house.

Mr. TOMPKINS. I think that is a much kinder way to express it.

Mr. HENDERSON. Put it that they had the veto power.

Mr. TOMPKINS. Surely. I think that is normal.

Mr. NEHEMKIS. In other words this account, Cleveland-Cliffs, had already become, in the words of Mr. Charles E. Mitchell, a "frozen account," and "the boys were already dividing up something they didn't own," in the words of Mr. H. L. Stuart?

Mr. TOMPKINS. Well, you had better ask Mr. Stuart or Mr. Mitchell to testify on that.

Mr. NEHEMKIS. They have done so already. On the same day as this conference you wrote to Mr. Greene, outlining the terms of the

¹ "Exhibit No. 1833."

syndicate. I show you a letter from yourself to Mr. Greene, dated June 28, 1935. Tell me, if you will, sir, whether that is a true and correct copy?

Mr. TOMPKINS. This is from me to Greene; yes.

Mr. NEHEMKIS. The document identified by the witness, may it please the committee, is offered in evidence.

(The letter referred to was marked "Exhibit No. 1834" and is included in the appendix on p. 12754.)

Now it would appear, Mr. Tompkins, that Mr. Greene was very disappointed with your construction of the contract terms as set forth in your letter of June 28, to which reference has just been made, being committee "Exhibit No. 1834"?

Mr. TOMPKINS. I just glanced at the letter; I didn't read it. I just identified it.

Mr. NEHEMKIS. Mr. Tompkins, would you examine the letter dated July 2, 1935, from Mr. Greene to yourself, and tell me whether that is a true copy?

Mr. TOMPKINS. Yes; I identify it.

Mr. NEHEMKIS. The letter identified by the witness, Mr. Chairman, is offered in evidence.

Acting Chairman KING. It will be received.

(The letter referred to was marked "Exhibit No. 1835" and is included in the appendix on p. 12755.)

Mr. NEHEMKIS. I read to you from the third paragraph of Mr. Greene's letter to you under date of July 2, 1935 [reading from "Exhibit No. 1835"]:

I am disappointed, however, in the last paragraph on the first page in which you state the terms upon which the bonds will be handled.

Note the next sentence, if you will, Mr. Tompkins:

Your statement is, of course, a wide departure from our contract.

And I call your attention to the date of this letter, July 2, 1935, so that despite the testimony of Mr. Greene this morning in which he referred to this as an informal agreement, a gentlemen's agreement, as late as July 2, 1935, he did refer to it as a contract.

Continuing, Mr. Tompkins [reading further]:

But even considering it as an offer to substitute a new plan, it is not satisfactory. Under our present understanding, the price of the bonds is set at par for a 5% bond, less 1% commission, but with the usual clause that if market conditions change to a marked degree, the price is to be adjusted to a figure which is satisfactory to both parties. According to your letter of June 28 you reserve the right to buy the bonds at the best price which in the opinion of the group can be obtained at the time the issue is ready to go to the market. In other words, this would give us no part in determining the price at which the bonds are to be bought. If we are to depart from the contract provision that you are to take the bonds at par less 1% commission, it seems to me our arrangement should at least provide that the price at which the bonds will be bought will be mutually satisfactory.

And again note what Mr. Greene says in his following paragraph, Mr. Tompkins [reading further]:

Also the sentence in which you say that we can depend upon it that the public price will be fair to our company "and the syndicate spread equally fair" is open to the further objection that this clause apparently reserves to the group the sole right to determine what is fair in respect to these matters and would give us no voice in agreeing upon the syndicate spread. I think in respect to both of these vital matters, if they are to be left open to be determined in the future, it must be at prices and upon terms which are mutually satisfactory to the parties.

In a memorandum identified by Mr. Greene this morning, being committee's "Exhibit No. 1822," Mr. Greene wrote as follows—

Acting Chairman KING (interposing). Did you want to ask any question concerning the matter to which you just directed his attention?

Mr. NEHEMKIS. No; I am proceeding with the same line of questioning now [reading from "Exhibit No. 1822"]:

I am more than ever convinced that Tompkins' idea is to string this along, writing indefinite letters, trying to get us up to August 12th without reaching any decision.

Now, why was the date August 12 significant? Was that the date on which the loan extension would terminate, Mr. Tompkins?

Mr. TOMPKINS. It has no significance in my memory.

Mr. NEHEMKIS. It doesn't recall anything to you at all?

Mr. TOMPKINS. In fact, I think the bank loans were to mature in January 1936, as I remember it.

MEMORANDUM OF JULY 8, 1935

Mr. NEHEMKIS. I show you a memorandum by yourself dated July 8, 1935. Will you be good enough to identify it for me, please? Is that a true and correct copy, Mr. Tompkins, of an original?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1836" and appears in full in the text.)

Mr. NEHEMKIS. I now read you the memorandum in question. This is for Mr. Monroe Gutman, Mr. Lewis Strauss, Mr. R. L. Morris, and Mr. Russell Forgan, from you to these gentlemen, dated July 8, 1935. [Reading from "Exhibit No. 1836":]

1. It is agreed that in any future financing no originating commission shall be paid to Bankers Trust Company or to any other member of the group.

2. It is agreed that in any future financing leadership shall rotate as between the houses appearing in the circular and in the advertising. On any issue which follows the one now contemplated either Hayden Stone or Field Glore will lead. Assumedly they will match for first position and the loser in that instance will automatically become head of any subsequent issue.

3. White & Case will act as counsel for the Trustee and Messrs. Lehman Brothers have suggested that Sullivan & Cromwell act as counsel for the bankers.

If the above is according to your understanding kindly initial and return one copy of this memorandum and retain the other for your files.

Did you receive confirmations from Kuhn, Loeb?

Mr. TOMPKINS. I assume that I did.

Mr. NEHEMKIS. And from the other bankers as well?

Mr. TOMPKINS. I assume so.

Mr. LUBIN. Mr. Tompkins, was there any arrangement with the Cleveland Cliffs Iron Co. when this issue was arranged as to future financing? Apparently, judging from these memoranda, such arrangements were made.

Mr. TOMPKINS. Yes; this group was to do any future financing for Cleveland Cliffs.

Mr. NEHEMKIS. In other words, that was part of the contract, that

if they wanted to do any financing in the future they would use the same group.

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. The original plans for the Cleveland-Cliffs Iron Co. merger with Cliffs Corporation contemplated by the contract of January 30, 1935, in the subsequent negotiations fell through, is that correct?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. And accordingly you released Mr. Greene from his obligation of his January 30 contract.

Mr. TOMPKINS. For that and a lot of other reasons, not just on that technicality.

Mr. NEHEMKIS. I show you a memorandum dated August 28, 1935, written by an associate of yours, Mr. Dana Kelley. Do you recognize that as a true copy of an original in your possession and custody, Mr. Tompkins?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. This document, identified by the witness, Mr. Chairman, is offered in evidence.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1837" and is included in the appendix on p. 12756.)

ARRANGEMENTS AS OF OCTOBER 28, 1935

Mr. NEHEMKIS. On October 28, 1935, was not a new plan of financing worked out, one that did not depend upon a merger of Cleveland-Cliffs with Cliffs Corporation?

Mr. TOMPKINS. At about that time; yes.

Mr. NEHEMKIS. And were not the participants in the financing and their interests set forth in letters by Lehman Bros. on or about October 28, 1935?

Mr. TOMPKINS. Don't hold me to the date; I don't remember. About that time; yes.

Mr. NEHEMKIS. Was not this the same group of investment banking firms as had previously been determined upon and acting under the terms as set forth in the first bankers' agreement?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. Mr. Chairman, I wish to offer in evidence at this time three letters to which reference has been made, covered by a stipulation entered into with me by Lehman Bros. under date of January 5, 1940.

Acting Chairman KING. They are explanatory of some of the matters to which reference has been made?

Mr. NEHEMKIS. Yes, sir; and this avoids calling one of the partners here, wasting his time, and so forth.

Acting Chairman KING. They may be received.

(The documents referred to were marked "Exhibits Nos. 1838 to 1842" and are included in the appendix on pp. 12757-12759.)

Mr. NEHEMKIS. There will be offered later three further documents covered by the same stipulation. At the time they are offered in evidence I will indicate that they are covered by the stipulation under which the committee has received these documents in evidence. They are signed by Lehman Bros.

Mr. Tompkins, when the \$16,500,000 bond issue was offered in December, each of the four principal underwriters had participations of about \$3,575,000, did they not?

Mr. TOMPKINS. Right.

Mr. NEHEMKIS. Mr. Greene had requested that A. G. Becker & Co., of Chicago, be included, had he not?

Mr. TOMPKINS. I don't remember that specifically. I think he made quite a few suggestions.

Mr. NEHEMKIS. Do you recall whether this firm actually was given a participation of \$200,000?

Mr. TOMPKINS. No; I don't recall; but there is a list of the participants there somewhere.

Mr. NEHEMKIS. You requested, did you not, Mr. Tompkins, that Lehman Bros. give a participation to C. D. Barney & Co.?

Mr. TOMPKINS. I may have, but I don't remember. I may have.

Mr. NEHEMKIS. Will you accept my statement as being correct, subject to your confirmation?

Mr. TOMPKINS. Sure.

Mr. NEHEMKIS. It would appear that unlike Mr. Greene's request, your request was not approved and C. D. Barney was not given a participation; do you recall that?

Mr. TOMPKINS. No; I don't know.

Mr. NEHEMKIS. This document which I am about to refer to falls under the stipulation and is "Exhibit No. 1842."

Acting Chairman KING. Mr. Witness, are you interested in any particular firm or firms being brought into the syndicate, or was your principal interest, or your sole interest, concerned in getting adequate and competent underwriters or members of the syndicate so that the necessary financing for the Greene organizations might be consummated?

Mr. TOMPKINS. My first interest was to have a group of original houses financially responsible for the size of the commitment. After that I had no further interest.

Acting Chairman KING. You felt that your agency was practically completed when a syndicate was formed which consisted of persons or groups or corporations competent to handle maturing obligations and to take the companies out of the hands of the court, receivers, whatever position they were in, and make them going concerns?

Mr. TOMPKINS. That is right.

Acting Chairman KING. Were those companies—this is for my own information; it may not be relevant, strictly—in a bad way and had they been for some time, which resulted in receivership?

Mr. TOMPKINS. Cleveland-Cliffs?

Acting Chairman KING. Yes.

Mr. TOMPKINS. Cleveland-Cliffs had escaped receivership. It was in the hands of a creditors committee. It owed, roughly, \$25,000,000 at the bank on short-term notes.

Acting Chairman KING. Were those commitments spread over a number of banks?

Mr. TOMPKINS. I think about seven banks. It had made very substantial losses in the 3 or 4 years preceding this arrangement. It was a God-awful mess.

Acting Chairman KING. Was it important that something be done in order to save them from sale by some of their creditors?

Mr. TOMPKINS. No; I don't think they were in danger of that, but what they had done, Senator, was to buy a long-term asset with short-term borrowing and they were constantly at the jeopardy of those short notes, and Mr. Greene very wisely worked toward a refunding of that short maturity into longer term bonds.

Acting Chairman KING. Well, I understood from you or Mr. Greene, or both, that the \$26,000,000 was too large an obligation for the syndicate to assume, and so it was reduced down to \$16,000,000, and then a \$5,000,000 loan was made to the bank; the \$16,000,000 was dealt with by the issuing of bonds or securities.

Mr. TOMPKINS. As a mortgage issue; yes, sir.

Acting Chairman KING. Now, what became of the residue of the obligation between the \$16,000,000, the \$5,000,000 cash, and the \$25,000,000?

Mr. TOMPKINS. The Cleveland-Cliffs Co. not only operated its ore properties, but it was the holder through subsidiaries of various substantial blocks of stock of steel companies, Republic Steel, Otis Steel, Wheeling Steel. The plant account of Cleveland-Cliffs stood at about \$29,000,000. These underwriters, therefore, determined that they could only put a first-mortgage bond on that plant account to the extent of about \$16,500,000, or we will say 50 percent of the plant value, roughly. It had in addition to its plant some \$11,000,000 market value of steel stocks which it had in its portfolio, so we lifted that block of steel stocks out of the portfolio and made those stocks the collateral for the \$5,000,000 bank loan.

Now, the difference that you mentioned was made up of the gradual sale of enough of those steel stocks to provide the cash for the difference.

Acting Chairman KING. Did these negotiations in which you have been the agent result in the saving of the company and its emancipation from its obligation so that it went on as a going concern?

Mr. TOMPKINS. That is the history of Cleveland-Cliffs. It is today a successful, going concern.

Acting Chairman KING. Did you, as an agent, obtain more than one-half of the 1 percent which was to be paid for the services to be rendered in obtaining the necessary financial resources?

Mr. TOMPKINS. No, Senator. Perhaps I can make this clearer if I say that when Mr. Greene came to us in January of 1935, the situation was as desperate as the figures indicated. During the year 1935, as we came up to the fall, it was constantly improving. Not only was the earnings picture of Cleveland-Cliffs itself better, but the price of the steel stocks which was in its portfolio was constantly increasing.

Whereas in January he had contemplated selling a 5-percent bond issue to the extent of \$24,000,000, 9 or 10 months later, in November of '35, he sold 4¾-percent bond issue, and he arranged a bank loan of 4¾ percent, and in the interim he sold some steel stocks and relieved the pressure on him in that way. But because a great many things had not happened which it was contemplated would happen when that so-called contract was drawn, namely, the merger of Cliffs Corporation and Cleveland-Cliffs, which never took place and never has taken place, that was one. The beginning of the Government suit that we didn't contemplate at the time in connection with Re-

public and Corrigan, McKinney. Mr. Greene and I by mutual agreement decided to forget that contract. It was never executed in finality, and after this job was completely done Mr. Greene said to me, I think it was in October 1935, "Now, it looks as if this job is about finished. You have arranged this syndicate for us, and they are prepared to make a commitment. You have arranged a bank loan for us which is to be secured by these steel stocks. We have spent endless days and weeks on this thing, and you have been helpful, and while we both agree that we are going to forget this contract, I would like to pay you something for your time."

I said, "That is quite all right with me, and you can write your own ticket."

He said, "I would like to make you a payment of \$25,000."

I said, "All right"; and that is what he paid me.

The 1 percent called for in that contract was never paid.

BANK LOAN OF \$5,000,000

Mr. NEHEMKIS. As one of the conditions of the bond issue, did not Cleveland-Cliffs agree to borrow \$5,000,000 from three banks, which, together with the proceeds of the bond issue, would refund all of the outstanding bank loans?

Mr. TOMPKINS. By that time they were down to about twenty-one million-odd. They had sold some steel stocks.

Mr. NEHEMKIS. I offer in evidence an extract from the loan agreement between Cleveland-Cliffs Iron Co., Bankers Trust Co., Cleveland Trust Co., and the First National Bank of Chicago with reference to a loan of \$5,000,000, that the witness has testified about. This is taken from the registration statement filed with the Securities and Exchange Commission.

Acting Chairman KING. It will be received.

(The document referred to was marked "Exhibit No. 1843" and is included in the appendix on p. 12759.)

Mr. NEHEMKIS. Now, the Bankers Trust Co. and the National Bank of Chicago each received two million of this five?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. And the Cleveland Trust Co. received the remaining \$1,000,000?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. All the other banks, Continental Illinois, Bank of Manhattan, National City Bank, Central United of Cleveland, received no part of this loan, although, as a matter of fact, they had been carrying Cleveland-Cliffs loans for a number of years?

Mr. TOMPKINS. That is right; they were just as unhappy about them as we were.

Mr. NEHEMKIS. Is it not a fact that some of these banks complained about their exclusion?

Mr. TOMPKINS. No; not that I know of.

Mr. NEHEMKIS. They just "took it"?

Mr. TOMPKINS. Well, if they did complain, they would have done that to our banking department; it wouldn't have come to me.

Mr. NEHEMKIS. Do you happen to know whether or not Charles Hayden and other partners of Hayden, Stone & Co. requested a sub-participation in the bank loan for the Equitable Trust Co.?

Mr. TOMPKINS. I knew about that, because that came to me. They had never been in the picture at all.

Mr. NEHEMKIS. But they had requested a subparticipation.

Mr. TOMPKINS. For the Equitable Trust.

Mr. NEHEMKIS. Do you happen to know of your own personal knowledge or information or belief whether or not Mr. Hayden owned the controlling interest in the Equitable Trust Co. at that time?

Mr. TOMPKINS. I think he did.

Mr. NEHEMKIS. Isn't it a fact that you refused a subparticipation to the Equitable Trust Co.?

Mr. TOMPKINS. That is correct.

Mr. NEHEMKIS. Will you examine the letter dated December 18, 1935, from yourself to Mr. Greene, and tell me whether you recognize that as a true and correct copy of the original that is in your custody?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. The letter identified by the witness, Mr. Chairman, is offered in evidence.

(The letter referred to was marked "Exhibit No. 1844" and is included in the appendix on p. 12760.)

Mr. NEHEMKIS. Was not Bankers Trust Co. appointed corporate trustee under the indenture?

Mr. TOMPKINS. Right.

Mr. NEHEMKIS. And was not that in accordance with the contract of January 1, 1935?

Mr. TOMPKINS. Correct.

Mr. NEHEMKIS. Are you familiar with the fact that the bankers in pursuance of their agreement of December 4 with Cleveland-Cliffs also obtained assurances from the directors of Cleveland-Cliffs that so long as the bonds were outstanding the bankers would have a continuing interest in seeing that the company would have a satisfactory management?

AGREEMENT RE: MANAGEMENT OF CLEVELAND CLIFFS

Mr. TOMPKINS. I don't remember that. Part of the agreement, you say?

Mr. NEHEMKIS. Yes. From a letter identified by Witness Greene this morning, being committee's "Exhibit No. 1824," I now read to you, Mr. Tompkins, to see whether or not this doesn't refresh your recollection. That is a letter from Mr. Greene dated December 6, 1935, to the bankers [reading "Exhibit No. 1824"]:

DEAR SIRS: Referring to the agreement dated December 4, 1935, between this company and yourselves and certain associates under which you severally agree as therein provided to purchase \$16,500,000, principal amount of First Mortgage Sinking Fund 4¾% Bonds of this Company, the Board of Directors has authorized me to advise you as follows:

We recognize that you will have a continuing interest for the protection of bondholders, in seeing that the Company has a satisfactory management, and, accordingly, desire to confirm the assurances given you during the course of the negotiations to the effect that, so long as any of the Bonds remain outstanding, the Company will, in case Mr. William G. Mather, Chairman of the Board of Directors or Mr. E. B. Greene, president of the Company, shall cease to hold such offices or cease to exercise their duties by reason of death or other cause, consult with you regarding the choice of a successor to either or both of such officers, to the end that any such successor shall be satisfactory to three or more underwriters

named in the above-mentioned agreement who have agreed to purchase not less than 50% of the aggregate principal amount of bonds.

Yours truly,

Cleveland-Cliffs Iron Company

by E. B. Greene.

President.

Mr. HENDERSON. May I ask a question right there——

Mr. NEHEMKIS. I just want to develop one or two things.

In effect, Mr. Tompkins, this agreement meant that the bankers could dictate to the directors who the future president or chairman of the board would be. Is that not correct, sir?

Mr. TOMPKINS. That was an agreement between Cleveland Cliffs and those underwriters.

Mr. NEHEMKIS. Absolutely. You knew something about that, didn't you?

Mr. TOMPKINS. I remember it only vaguely.

Mr. NEHEMKIS. Had you ever heard of it prior to your testimony here and my reading of it?

Mr. TOMPKINS. No—Yes, in this way, that I know the bankers were concerned about a continuity of management there. They had seen what had happened to this company before Mr. Greene took the presidency and they were looking ahead to the day when he might not be president.

Mr. NEHEMKIS. I am going to repeat to you my question, which I would like you, as an expert banker, to give me your opinion on. In effect, did not this agreement mean that the bankers could dictate to the directors who the future president or chairman of the board would be?

Mr. TOMPKINS. I would have to examine the language of it pretty carefully to know whether that is right or not. I think that its purpose was to see that future officers of the company would be selected only after consultation with the bankers, that would be agreeable to the bankers.

Mr. NEHEMKIS. Would you say that the bankers possessing a veto power over who was to fill these two offices in reality were assured of controlling all future public financing by Cleveland-Cliffs?

Mr. TOMPKINS. Under their agreement they had a first call on any future financing.

Mr. NEHEMKIS. But in addition to that, pursuant to this arrangement in "Exhibit No. 1824," which has gone into evidence, since no person could be either president or chairman who was not acceptable to the bankers, didn't that in effect mean that they controlled all future financing because only these two men would ever hold those offices?

Mr. TOMPKINS. Well, that assumes that a board of directors could abdicate its right to choose its officers, the officers of the corporation.

Mr. NEHEMKIS. Isn't that precisely what was done in this case, Mr. Tompkins?

Mr. TOMPKINS. If it is a good agreement; I don't know.

Mr. NEHEMKIS. I am not asking you to pass judgment on its legal validity; I am asking you as an expert, a banker of many years'

standing in the community and well known in financial circles, to give me your opinion as an expert.

Acting Chairman KING. As to what?

Mr. TOMPKINS. You are asking me to give my opinion as to validity of that agreement and I can't do it.

Mr. NEHEMKIS. No, sir, I ask you whether in effect the Cleveland-Cliffs management didn't abdicate all their rights of management to four banking firms.

Mr. TOMPKINS. If that document is good legally, then the answer is "yes." I don't know whether they could impose that on a board of directors.

Mr. HENDERSON. You say you don't recall this particular clause very explicitly. Was that negotiated when you were agent?

Mr. TOMPKINS. This agreement about future management?

Mr. HENDERSON. Yes.

Mr. TOMPKINS. It was done between Greene and the syndicate.

Mr. HENDERSON. It wasn't any part of your negotiation?

Mr. TOMPKINS. No.

Mr. HENDERSON. Do you recall whether it is a common custom in connection with financing arrangements for the underwriters to get from the board of directors such a statement as this?

Mr. TOMPKINS. No, I think it would be most unusual.

Mr. HENDERSON. Do you recall any other cases in which similar terms were negotiated, perhaps in the companies that were in desperate shape or the like?

Mr. TOMPKINS. I can't give you the names.

Mr. HENDERSON. It is done sometimes, is it not?

Mr. TOMPKINS. Yes, I would say, Mr. Commissioner, it is only done when you want to be sure that the people who are now in, and in whom you have confidence, are going to be there.

Mr. HENDERSON. Where you might say that the management is one of the considerations upon which the underwriters engage to take the underwriting?

Mr. TOMPKINS. Yes.

Acting Chairman KING. Is it not a common thing between private persons in business and their local bank or persons who may loan them money, to annex as a condition to the extension of the credit that A, B shall continue in control of the sheep herd, or in control of the mine operation?

Mr. TOMPKINS. Yes, in direct commercial loans we ought to do that.

Acting Chairman KING. I have in mind cases where in mining operations loans have been obtained largely upon the strength of the ability of the man who was in charge. He was an expert technician and understood mining, understood the technology of mining, and the banker or private individuals would extend credit upon the ground that he be continued in control, because they had confidence in his technical knowledge and his understanding of mining activities, and if some new man came in who was unacquainted with the mine, the ore deposits, they would not feel safe in making the loan.

Mr. TOMPKINS. They would at least want an opportunity to review it.

Acting Chairman KING. To find out his competency.

Mr. LUBIN. Mr. Tompkins, do you know of any instances where such requirement was made on management, where management

yielded, except in those cases where management was so hard up it had no other alternative? In other words, would it be likely that any corporation would yield its right to select its own officers or that any board of directors would yield its right to select its own officers, except under those conditions where they were so hard pressed that they had no other alternative?

Mr. TOMPKINS. I think you are right.

Mr. LUBIN. In other words, then, it is those instances such as the chairman just mentioned which are typical only when the management has no alternative and has to yield to what the banker demands?

Mr. TOMPKINS. Well, in an industrial situation, management is of such paramount importance—it is the first thing we always look at—that a banker always tries to guard himself against a shift in that management, to the best of his ability. If you have an old-line company that has a long record of successful management, where you are absolutely confident that the board will always fill those positions with competent men, it never occurs to you to have an agreement. As in this case, it was only the fact that Mr. Greene had taken over this and was operating it and giving it vitality that made it possible to do this business at all.

Mr. LUBIN. In other words, if a telephone company should go to an investment house and want to borrow \$20,000,000, no investment banker would dare put such conditions in the contract.

Mr. TOMPKINS. I don't think it ever would occur to an investment banker to do that.

Mr. HENDERSON. Mr. Tompkins, in this case the underwriters might have had at least two thoughts in mind. In the first place, they were selling securities to the public, and in that case they wanted to keep the continuing good will of those with whom the bonds had been placed. The second thing they might have had in mind was the insurance of the continuing financing. Isn't that true?

Mr. TOMPKINS. To see that they—

Mr. HENDERSON (interposing). That they got the financing.

Mr. TOMPKINS. I think they covered that in their first memorandum.

Mr. HENDERSON. This might have been just a double lock.

Mr. TOMPKINS. This was just to prevent any sudden shift in that management that might produce a management that would go out and buy another Corrigan, McKinney.

Mr. HENDERSON. I was just about to ask you that. There was in the antecedent history of this company considerable gyration, investment, and some might call it speculation with the funds, and it is likely that they had that in mind also. Is that what you mean by buying Corrigan McKinney—not "doing a Corrigan"?

Mr. TOMPKINS. Mr. Commissioner, a little too much vision, one might say.

Mr. HENDERSON. The vision turned out to be a nightmare in some cases.

Acting Chairman KING. Would not a reputable investment house that sells its bonds to the public, even though it doesn't put up the money itself but sells bonds and gets the money for its patron, be interested in having the company whose bonds it was selling or underwriting operated in a judicial manner and by persons competent to deal with the problems that would arise in the administration?

Mr. TOMPKINS. Absolutely.

Acting Chairman KING. And though they didn't put up their own money in some instances, their honor was more or less involved in the fact that they would sell these securities to the public.

Mr. TOMPKINS. Yes, sir.

Acting Chairman KING. Therefore, is there anything improper, in your judgment, and has it not been the practice not only with private individuals who are loaning money, but investment companies and banks, to inquire into the character of the business and who was in charge of it, and to desire to be satisfied as to the competency of the persons in charge to discharge their duties and obligations so as to make the business a success?

Mr. TOMPKINS. That is always a very important consideration in handling money.

Acting Chairman KING. So the investment company, I would suppose, would feel its honor was more or less involved when it sold securities to the public, though it did not advance its own money.

Mr. TOMPKINS. Yes; it has a continuing responsibility to the people who buy the securities.

Mr. HENDERSON. You get into a number of very delicate questions in management, do you not, when you get into the position of passing on management and its judgments. You get into what they call banker management once in a while, do you not?

Mr. TOMPKINS. Yes. Management itself is a thing that a banker tries to avoid. He feels that his responsibility is to help select management, but wherever, in our experience, I have seen a banker as a banker try to operate an industrial company, the record of his management generally indicates that he ought to have stayed in the banking business.

Mr. HENDERSON. That isn't always true, though. There are some examples where the bankers took over successfully.

Mr. TOMPKINS. There are some examples.

Mr. HENDERSON. But I think I would incline to agree with you that they ought to stick to their banking.

Mr. TOMPKINS. In general.

BROKERAGE TRANSACTIONS FOR CLEVELAND-CLIFFS

Mr. NEHEMKIS. Mr. Tompkins, did not the agreement between the bankers also include the right to participate in the commissions for brokerage transactions involving Cleveland-Cliffs?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. And did not the four underwriting firms actually share commissions when Cleveland-Cliffs sold 10,000 shares of Republic Steel common in '35. and 20,000 shares in 1936?

Mr. THOMPkins. That is right.

Mr. NEHEMKIS. I now offer in evidence a letter from the files of Lehman Bros. and a memorandum from the files of Lehman Bros. covering brokerage transactions. These two documents are covered by the stipulation¹ previously admitted in evidence.

(The documents referred to were marked "Exhibits Nos. 1845 and 1846" and are included in the appendix on p. 12761.)

¹ "Exhibit No. 1838."

Mr. NEHEMKIS. And bearing upon the same subject three extracts from the registration statement of Cleveland-Cliffs Iron Co. on file with the Securities and Exchange Commission.

Acting Chairman KING. They may be received.

(The memoranda referred to were marked "Exhibits Nos. 1847-1 to 1847-3" and are included in the appendix on pp. 12761-12763.)

FEES PAID TO LEHMAN BROS. AND BANKERS TRUST CO.

Mr. NEHEMKIS. According to the underwriters' agreement, Mr. Tompkins, of June 28,¹ Lehman Bros. were to be paid one-half percent of the principal amount of the bonds as a management fee. Is that correct?

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. But they finally received a fee of only three-eighths percent.

Mr. TOMPKINS. It was readjusted among themselves.

Mr. NEHEMKIS. Readjusted between the group?

Mr. TOMPKINS. That is right.

Mr. NEHEMKIS. When the contract of January 30, 1935,² was drawn up, Bankers Trust Co. was to be paid a fee of 1 percent of \$24,000,000, or \$240,000.

Mr. TOMPKINS. Right.

Mr. NEHEMKIS. When the agreement among the underwriters was drawn up on June 28, 1935, Bankers Trust was to be paid a fee of one-half percent of \$24,000,000 or \$120,000.

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. In December 1935, Bankers Trust was actually paid \$25,000.

Mr. TOMPKINS. Yes.

Mr. NEHEMKIS. So it would appear, would it not, that the longer you worked the less you got paid?

Mr. TOMPKINS. That is unfortunately the case.

Mr. NEHEMKIS. No further questions, Mr. Chairman.

Mr. HENDERSON. In some cases a banker works and doesn't get paid at all.

Mr. TOMPKINS. In some cases.

Acting Chairman KING. In some cases the banker loans money and he doesn't get paid.

Mr. TOMPKINS. That is very often true.

Mr. O'CONNELL. I would like to ask a question. This morning I asked you a question or two about the consideration that was given to the question of whether or not what your bank did in this operation was in violation of the 1933 Banking Act, and I am not entirely clear exactly what consideration was given that question by you. Will you clear that up for me?

Mr. TOMPKINS. When Mr. Greene came to me and asked if we could undertake this job I said I thought we could as his agent. We discussed the general basis on which I might act as agent. Then I said, "We will reduce this to a contract which we will have the lawyers draw and which they can submit to your lawyers." White &

¹ "Exhibit No. 1833."

² "Exhibit No. 1819."

Case, my counsel, drew a contract which they sent to me and which I naturally assumed was drawn in keeping with the law.

Mr. O'CONNELL. But the only thing that you got from White & Case when they returned the contract to you was a statement to the effect that in their opinion [reading from "Exhibit No. 1825"]:

the same is in satisfactory form and sufficient for the purposes indicated.

Now that to you meant that they had considered whether or not that contract was proper under the Banking Act of 1933 and were so advising you in this fashion?

Mr. TOMPKINS. That, supplemented by long conversations with various members of the firm on this subject.

Mr. O'CONNELL. So it is clear in your mind at least that from this letter and from conversations with your lawyers it was their considered opinion that the contract was legal within the Banking Act of 1933?

Mr. TOMPKINS. That is correct.

Mr. NEHEMKIS. I think, Mr. Tompkins, that you are dismissed and we are very grateful to you for having given us so much of your time.

Mr. TOMPKINS. Thank you.

(Representative Williams took the chair.)

Mr. NEHEMKIS. Will Mr. William Whitehead take the stand, please?

Mr. Whitehead, will you examine these documents and tell me whether they were obtained by you from the files of Kuhn, Loeb & Co.?

Mr. WILLIAM WHITEHEAD (Securities & Exchange Commission). They were.

Mr. NEHEMKIS. Mr. Chairman, I am offering in evidence at this time the documents identified by Mr. Whitehead of my staff, insofar as they pertain to another agreement between the Guaranty Co., which as you recall was the old affiliate of the Guaranty Trust Co., and Kuhn, Loeb, concerning American Smelting & Refining Co. The matter will be dealt with in the report which we will ultimately submit to the committee, but I would like them spread on the records of the committee.

Acting Chairman WILLIAMS. They may be received.

(The letters referred to were marked "Exhibits Nos. 1848 to 1851" and are included in the appendix on pp. 12764-12765.)

Mr. NEHEMKIS. Mr. Mathers, will you take the stand, please? Both of these gentlemen have been previously sworn, and I merely want them to identify these documents. Mr. Mathers, will you examine those documents and tell me whether you obtained them from the firms, partnerships, or corporations indicated therein?

Mr. L. C. MATHERS (Securities and Exchange Commission). I did.

Mr. NEHEMKIS. And they were given to you by duly authorized representatives in response to your request?

Mr. MATHERS. That is correct.

Mr. NEHEMKIS. Mr. Chairman, I ask leave of the committee that these documents be received.

(The documents referred to were marked "Exhibits Nos. 1852-1 to 1856" and are included in the appendix on pp. 12766-12772.)

Mr. NEHEMKIS. Mr. John F. Fennelly, please.

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FENNELLY. I do.

**TESTIMONY OF JOHN F. FENNELLY, GLORE, FORGAN & CO.,
CHICAGO, ILL.**

Mr. NEHEMKIS. Will you state your full name and address, Mr. Fennelly?

Mr. FENNELLY. My name is John F. Fennelly, partner of Glore, Forgan & Co., resident of Chicago.

Mr. NEHEMKIS. How long have you been a partner of Glore, Forgan & Co.?

Mr. FENNELLY. Since July 1, 1935.

INDIANAPOLIS POWER & LIGHT CO. FINANCING, 1938

Mr. NEHEMKIS. On or about August 1, 1938, did not the Indianapolis Power & Light Co. engage in a refunding operation involving some \$32,000,000 of 4-percent mortgage bonds and about \$5,500,000 of serial notes?

Mr. FENNELLY. Yes. My recollection is that they were 3¾-percent bonds, but that may be incorrect.

Mr. NEHEMKIS. Is not Indianapolis Power & Light a subsidiary of Utilities Power & Light?

Mr. FENNELLY. That is correct.

Mr. NEHEMKIS. Was not this financing brought out under the leadership of Lehman Bros.?

Mr. FENNELLY. Yes.

Mr. NEHEMKIS. Can you tell me who some of the principal underwriters associated with Lehman Bros. were in that financing?

Mr. FENNELLY. Well, my firm, Glore, Forgan & Co., The First Boston Corporation was, I recall. Frankly, the list as such is not in my mind. It was a very broad list of underwriters.

Mr. NEHEMKIS. But those who had the largest participations were your firm and First Boston, and I show you a prospectus to see if that doesn't refresh your recollection and give you a clue to the other names.

Mr. FENNELLY. The First Boston was in second position; Glore, Forgan in third—this is in appearance; Halsey, Stuart in fourth position, and the last three houses named all having an equal interest in participation in the business; Stone & Webster and Blodgett, Inc., Blyth & Co., Brown Harriman & Co., all with the same interest; Goldman, Sachs & Co. and Lazard Frères & Co. with an equal interest with the houses just previously named. Do you want me to go on?

Mr. NEHEMKIS. No; that is sufficient; thank you very much. In the spring of 1938 did not Mr. Charles True Adams approach your firm with the suggestion that he would like your firm to head up the financing of Indianapolis Power & Light?

Mr. FENNELLY. That is correct.

Mr. NEHEMKIS. Did you not at that time advise Mr. Adams that you were a member of the Lehman group, and being under a commitment to Lehman Bros., could not accept his invitation?

Mr. FENNELLY. That is also correct.

Mr. NEHEMKIS. Did not Mr. Adams inform you that he had no intention of having Lehman Bros. head up the group since he wanted the business handled by a Middle Western firm?

Mr. FENNELLY. That is the way that I stated his position in the letter that I subsequently wrote on this matter. I would like to say that is correct with a slight variation in that what he was trying to convey was that he had felt he had no commitment to do the business with Lehman Bros. and that as such he would prefer to do the business in the Middle West.

Mr. NEHEMKIS. Were you aware at the time of your discussions with Mr. Adams that in the spring of 1938 the finance committee of Indianapolis Power and Light had on or about July 15, 1937, already authorized Lehman Bros. to head up a syndicate for the refunding operations?

Mr. FENNELLY. No; I was not.

Mr. NEHEMKIS. You were not aware of that?

Mr. FENNELLY. No.

Mr. NEHEMKIS. Were you aware of that fact prior to your testimony here and my statement?

Mr. FENNELLY. Not as such. I knew that Lehman Bros. had gone to work on the deal in 1937. How far they had entered into an actual agreement with the finance committee I have never been aware.

Mr. NEHEMKIS. Mr. Chairman, I now refer the committee to "Exhibit No. 1852, 1 to 3," previously received in evidence, containing the authorization of the finance committee of Indianapolis Power & Light to Lehman Bros., authorizing them to head up the syndicate to which reference has been made.

Now, on May 24, 1938, during the time of your discussion with Mr. Adams, did you not have occasion to transmit the subject matter of your discussion to your New York partner, Mr. J. Russell Forgan?

Mr. FENNELLY. I did.

Mr. NEHEMKIS. And now reading from "Exhibit No. 1853," previously received in evidence, a letter dated May 24, 1938, by Witness Fennelly to Mr. J. Russell Forgan, I call your attention, if I may, Mr. Fennelly, to the following paragraphs:

Some weeks ago when Mr. Adams first approached us with regard to helping him work out the reorganization of Utilities Power & Light, he told us that he would like to have us head up the financing of Indianapolis Power & Light. We immediately told him of our commitment to Lehman Brothers and that we had already accepted a position in Lehman's group subject to that position being satisfactory to us.

Now skipping to the third paragraph:

More recently, Mr. Adams asked us if we could work out a satisfactory arrangement with Lehman Brothers, and advised us that if we could do so he was prepared to proceed immediately with the Indianapolis financing. We have told Mr. Adams that we felt it was entirely possible for us to work out such an arrangement and would proceed to do so at once. Our ideas, as you know, of a satisfactory arrangement are a joint managership account which we should head in the West and which Lehman should head in the East. Pending the reaching of such an agreement, we find ourselves in the awkward position of being unable to talk with Mr. Adams about this financing, and at the same

time realizing that practically everybody in the investment business is shooting at him about it, in fact we have good reason to believe that other members of the Lehman account are working independently and actively for the business. Our sincere feeling about this matter is that if Lehman Brothers are willing to agree to a joint managership as outlined above, we can be very helpful in convincing Mr. Adams as to the desirability of proceeding at once with the business. If this is not done, we feel that Mr. Adams is likely to let the whole matter drift, at least until next fall, by which time he may have missed the opportunity to do the job under present favorable market conditions. If Lehman Brothers cannot see their way clear to such an arrangement, we shall feel obliged to withdraw from their account. If we do so withdraw, we will agree with them that we will do nothing about this business, either independently or in conjunction with others, for some reasonable length of time. Our idea of a reasonable length of time would be from now until next fall, during which time Lehman Brothers would have a free hand as far as we are concerned, to proceed with their present negotiations.

Now Mr. Fennelly, did you succeed in getting joint managership?

Mr. FENNELLY. No; we did not.

Mr. NEHEMKIS. You had, however, a substantial underwriting position, did you not?

Mr. FENNELLY. That is right; yes.

Mr. NEHEMKIS. Now, if you will follow me on the postscript to your letter [reading from "Exhibit No. 1853"]:

Since writing the above, I have discussed the matter further with Charlie—

Charles Glore, I take it—

Mr. FENNELLY. Yes.

Mr. NEHEMKIS (continuing):

and we have both agreed it would be dangerous to show this letter to Lehman Brothers. He agrees, however, that the letter states his position exactly and that all of the matter contained herein can be used in discussing the matter with them; he is even willing to have you agree to a joint managership arrangement for all future Utilities Power & Light financing if you think it desirable. He feels it is most important that Lehman give us an immediate answer on this matter because he has just had another call from Adams asking about the situation and telling him that the finance committee of the Company in Indianapolis is anxious to proceed at once and that pressure is being put on him from all directions.

Did your partner discuss with Lehman Brothers the possibilities of joint managership on future Utilities financing?

Mr. FENNELLY. I really don't know whether they did or not, because we never came to an agreement with them on this particular piece of financing, and it is my belief that that subject was never discussed.

AGREEMENT ON LEADING POSITIONS IN FUTURE FINANCING OF INDIANAPOLIS POWER & LIGHT AND UTILITIES POWER & LIGHT

Mr. NEHEMKIS. If Indianapolis Power & Light should in the near future bring out another issue, what do you contemplate your relationship to the syndicate would be, Mr. Fennelly?

Mr. FENNELLY. Frankly, I have never given it any thought. My guess would be that probably we would expect a substantial position in the group under the leadership of Lehman Brothers. There is no necessity that that would follow at all.

Mr. NEHEMKIS. Your treatment of Lehman Brothers in the spring of '38, when in effect you were offered the financing on a platter by the trustee of the organization, was extremely generous. Would you

not in view of that fact expect to receive, shall I say, favorable consideration (a) in any Indianapolis Power and Light financing, and (b) favorable consideration in any future Utilities Power & Light financing as well?

Mr. FENNELLY. Frankly, we might expect it but I would be very much surprised if we got anything back from them. That has been the history of all such expectations as far as I can see.

Mr. NEHEMKIS. You would not then hope to have even the same consideration that might be accorded to, shall I say, First Boston Corporation, who had an equal participation with you?

Mr. FENNELLY. Well, yes; I would be surprised if we did not receive as favorable consideration in the Indianapolis Power & Light account, but as far as the rest is concerned it would have no reference as far as I can see.

Mr. NEHEMKIS. Well, I am afraid it is my painful duty to inform you that you will not receive that consideration, because in this particular case virtue was not rewarded. In connection with "Exhibit No. 1854-1," previously received in evidence, I now read to you, Mr. Fennelly, a memorandum by Joseph A. Thomas, partner of the investment banking firm of Lehman Brothers, dated June 26, 1939 [reading from "Exhibit No. 1854-1"]:

I met today with Sidney Weinberg and Howard Sachs, of Goldman, Sachs & Company, Harry Addinsell and George Woods, of the First Boston Corporation.

We made the following agreement on Indianapolis Power & Light financing:

Lehman Brothers is to head the business, handle the details in our office and negotiate the deal in behalf of themselves, Goldman, Sachs & Company and The First Boston Corporation.

In the advertising the three firms are to appear on the same line in the following order: Lehman Brothers, Goldman, Sachs & Co., The First Boston Corp.

The management compensation is to be divided as follows: 40% to Lehman Brothers, 40% to Goldman, Sachs & Company, and 20% to The First Boston Corporation. All three firms are to have equal percentages in the underwriting.

We made a similar arrangement on Utilities Power & Light Company and its subsidiaries, i. e. management compensation to be divided into 40% to Lehman Brothers, 40% to Goldman, Sachs & Company, and 20% to The First Boston Corporation.

And then I have here, but they will no longer interest you, letters of confirmation from the respective firms, and I regret to say that Glore, Forgan was not included.

Mr. FENNELLY. May I ask a question with reference to that?

Mr. NEHEMKIS. I want to get one more thing in and then you may. I call attention to a collection of correspondence between Mr. Floyd Odum and Mr. Robert Lehman concerning the agreement entered into by the three firms to which reference has been made and which is now in evidence.¹

Mr. NEHEMKIS. No further questions of the witness.

Acting Chairman WILLIAMS. Has anyone any questions?

"MORAL COMMITMENT" RESULTING FROM MEMBERSHIP IN AN ACCOUNT

Mr. HENDERSON. Yes. What was the reason you felt you couldn't talk to Mr. Adams about the financing?

Mr. FENNELLY. Simply because we had made a commitment to Lehman Brothers, being a member of their account, and we regarded

¹ See "Exhibit No. 1855-1 to 1855-4.

that as a moral commitment which we weren't prepared to abrogate.

Mr. HENDERSON. Is that a usual thing in the underwriting business?

Mr. FENNELLY. I don't know whether it is usual or not, but I can assure you it was usual as far as my firm is concerned.

Mr. HENDERSON. That is, they make commitments in groups and then they will not engage individually in trying to get the business.

Mr. FENNELLY. I would like to put it this way, Mr. Commissioner, that we have gone to Lehman Brothers and asked to be a member of their account, had asked for a position in their group. Having gone to them and put ourselves under obligation to them, and they having agreed to include us in their group, we felt that it would be an unethical thing, and I mean that not professionally, but just simply human ethics to turn around and try to take the business away from them.

Mr. HENDERSON. They didn't have the business, did they?

Mr. FENNELLY. Well, they had it under the agreement which has been read to me.

Mr. HENDERSON. What was the status of Mr. Adams in the picture?

Mr. FENNELLY. Mr. Adams was a trustee of Utilities Power and Light, who, as I recall, had been appointed to that position in the spring of 1938, and as such he had no part in the negotiations in 1937.

Mr. HENDERSON. Yes; but did he have the say-so on the financing all that time?

Mr. FENNELLY. He led us to believe that he did.

Mr. HENDERSON. Was there a doubt in your mind that he did have the say-so?

Mr. FENNELLY. I shouldn't think there was any doubt in our mind; we knew that he was the chief factor in that holding company which controlled Indianapolis Power and Light.

Mr. HENDERSON. Well, if you had not gone to Lehman, would you have been free, do you think, to accept the commitment?

Mr. FENNELLY. Yes; very definitely so; would have had no hesitation in so doing.

Mr. HENDERSON. Knowing that the prior indication of the board was that they wanted Lehman to hold it?

Mr. FENNELLY. Without any hesitation at all, because if Mr. Adams as trustee told us that he didn't recognize a previous commitment made when he was not trustee and was in a position to give us the business, if we had had no prior moral obligation in our own minds, we certainly would have taken the business.

Mr. HENDERSON. Absenting the trustee status, suppose it was generally understood that Lehman had the business and no contract had been executed, would you feel free to go?

Mr. FENNELLY. Absolutely, yes.

Mr. HENDERSON. Do you in many instances do that?

Mr. FENNELLY. We have in my recollection in a number of instances, yes.

Mr. HENDERSON. In those cases with a historical relationship with any banking firm as issuer?

Mr. FENNELLY. Very definitely.

Mr. HENDERSON. Does that mean that your corporation is actively and vigorously trying to get accounts?

Mr. FENNELLY. All the time.

Mr. HENDERSON. Are you having any luck?

Mr. FENNELLY. Sometimes too few, in my opinion.

Mr. HENDERSON. Do you think any part of that is due to general feeling that you are a Chicago house?

Mr. FENNELLY. The fact that we don't get more business? I shouldn't say so; no.

Mr. HENDERSON. Do you go after any of the railroad accounts that come into Chicago?

Mr. FENNELLY. There has been so little railroad financing I would hate to make a statement as to whether we had or not, Mr. Commissioner. Nothing recent on it.

Mr. HENDERSON. Do you make a persistent effort to try to get financing of Chicago concerns?

Mr. FENNELLY. Oh, yes; all the time.

Mr. HENDERSON. Have you been having any luck in getting any of them away from the eastern banking houses?

Mr. FENNELLY. I couldn't answer the question as far as getting away from the eastern banking houses, Mr. Commissioner, because, frankly, we don't think of ourselves as a Chicago banking house. We have an office in New York with four partners in New York, and three partners in Chicago, and while our background is more middle western than others, we are doing business in the East and we are doing business in the West. Does that answer your question?

Mr. HENDERSON. Yes. I have no further questions.

Mr. LUBIN. May I ask the witness a question? Just what is involved in what you call in this correspondence your commitment to Lehman Brothers? Is it a commitment not to try to get firms that have had agreements with Lehman in the past, or is it a commitment to stay out of certain definite fields of activity?

Mr. FENNELLY. No, sir; not at all. That commitment is our own idea of a moral commitment of ours on this specific piece of business because we had gone to Lehman and asked them to be included in their account, and refers not at all to historical relationships, and it isn't a question of competition or noncompetition. We had given our word to somebody, and we just thought it would be a low trick to go out and try to take the business away.

Mr. LUBIN. In other words, Lehman already had a relationship with this corporation and you had agreed that as far as that corporation was concerned you wouldn't undertake to get the financing.

Mr. FENNELLY. We didn't make any such agreement. We understood that Lehman was in a position to head up a syndicate. We went to Lehman Brothers and asked if they would include us in their business as a prominent house with an important office in the Middle West—this was a Middle Western piece of business—and they agreed they would be delighted to have us in the business, and the point I want to express is there was no agreement about staying clear of this thing, we had asked to be in their business, and because we had asked to be in their business, we felt we had a moral obligation not to compete with them on this specific piece of business.

Mr. HENDERSON. It was a two-way commitment, was it not? They had agreed to give you a piece of the business, and they didn't.

Mr. FENNELLY. Oh, yes; they did.

Mr. HENDERSON. It had nothing to do with future financing.

Mr. FENNELLY. Absolutely not at all.

AGREEMENT ON FUTURE FINANCING OF ASSOCIATED GAS & ELECTRIC CO. AND
SUBSIDIARIES—1937

Mr. NEHEMKIS. Mr. Chairman, before we conclude this session I should like to read a memorandum which has been covered by a stipulation which I shall ask you to examine in a moment. This is a memorandum regarding the relationship of The First Boston Corporation and Lehman Brothers in connection with Associated Gas & Electric financing and such is the agreement entered into on January 25, 1937, with reference to these companies. It reads as follows [reading from "Exhibit No. 1857-4"]:

With respect to all future financing for Associated Gas & Electric or its subsidiaries, the two firms are to manage such financing jointly as leaders (details of the handling of the business to be worked out later) due recognition to be given in such financing to the obligations of The First Boston Corp. to old participants in the Chase-Harris Forbes groups in a manner satisfactory to both firms.

In connection with New York State Electric and Gas Corporation financing, The First Boston Corp. and Glore, Forgan & Co. are to be managers; Lehman Brothers are to be offered an equal participation in amount with the above two firms, Lehman Brothers' name to appear in third place.

This is covered by stipulation entered into with me by Mr. Arthur Dean, of Messrs. Sullivan & Cromwell, counsel to The First Boston Corporation. I ask that these documents be admitted in evidence, bearing on the points under discussion.

Acting Chairman WILLIAMS. They may be admitted.

(The documents referred to were marked "Exhibits Nos. 1857-1 to 1857-5" and are included in the appendix on pp. 12773-12775.)

Mr. NEHEMKIS. May I ask my associate, Mr. Mathers, to take the stand just for a moment? Mr. Fennelly, before you make your statement? Just be seated, if you will.

Mr. Mathers, will you be good enough to identify "Exhibit No. 1856," being a transcription of a telephone conversation by Mr. Iglehart re New York State Gas & Electric Co., dated October 20, 1932, so that the record may be thoroughly clear? Tell me once again where you obtained that document?

Mr. MATHERS. I found this document in the files of the New York office of Glore, Forgan & Co. It is a copy of a transcript of Mr. Joseph A. W. Iglehart's telephone conversation on October 20, 1932, relative to New York State Electric & Gas financing.

Mr. NEHEMKIS. Now Mr. Iglehart is no longer a partner, to your knowledge, of Glore, Forgan & Co.?

Mr. MATHERS. No, sir.

Mr. FENNELLY. He never was a partner.

Mr. MATHERS. He is presently a partner of W. E. Hutton & Co.

Mr. NEHEMKIS. Will you tell me the other person with whom Mr. Iglehart was holding the telephone conversation at the time?

Mr. MATHERS. The memorandum does not state, but Mr. Joseph Iglehart told me it was with Mr. Russell.

Mr. NEHEMKIS. And can you tell me Mr. Russell's initials?

Mr. MATHERS. P. N. Russell, I believe it is.

Mr. NEHEMKIS. And you went to see Mr. Iglehart expressly to ascertain who the other person on the telephone was, did you not?

Mr. MATHERS. Yes.

Mr. NEHEMKIS. Thank you very much, Mr. Mathers.

I shan't discuss the document at this time. I think the committee will find at its leisure that this document is well worth reading.

AGREEMENT RE MANAGEMENT OF CLEVELAND-CLIFFS CO.—RESUMED—
STATEMENT BY MR. JOHN F. FENNELLY

Mr. Chairman, may it please the committee, Mr. Fennelly has asked leave of the committee to make a statement clarifying certain things that were said during Mr. Tompkins' testimony, in which he feels there may be some misunderstanding, and I have no objection if it is the committee's pleasure.

Mr. HENDERSON. What is the nature of it?

Mr. FENNELLY. With reference to the document that was filed, the contract entered into between Mr. E. B. Greene and the underwriting group, of which my firm was one, of which Mr. Tompkins testified he knew nothing about.

Mr. NEHEMKIS. That was the letter in which Mr. Greene abdicated the functions of the board of directors for a period of time in favor of the four banking houses, one of which was Field, Glore, now Glore, Forgan, of which Mr. Fennelly is a partner. Does the committee care to hear Mr. Fennelly's statement?

Acting Chairman WILLIAMS. I think you might proceed with that. I think that is relevant, if it is about that matter.

Mr. FENNELLY. All I wanted to say was this, that that agreement was entered into between Mr. Greene and the four underwriting, four chief underwriting houses namely Lehman Brothers; Kuhn, Loeb; Field, Glore; and Hayden, Stone & Co. This point I wanted to put in the record was that that agreement was entered into at the specific request of Mr. E. B. Greene. Mr. Greene informed us he was concerned, in view of the past experience of Cleveland-Cliffs, about the continuity of that management, and was concerned about what might happen in the event he or Mr. Mathers, chairman of the board, should die, and he requested us to enter into that agreement with him. The agreement was never at any time brought up by the bankers and it was a kind of an agreement that I for one have never seen entered into in a mortgage issue of this kind. And it was only done because Mr. Greene was concerned that the continuity of the management should be preserved, and he wanted to have the outside assistance of the underwriters to that effect.

Mr. NEHEMKIS. May I take this occasion, Mr. Chairman, of thanking Mr. Fennelly for having given us so freely of his time? He spent many hours with us on this problem.

Acting Chairman WILLIAMS. Have you anything else at this time?

Mr. NEHEMKIS. No, sir. Shall I tell you, sir, the witnesses for tomorrow? Tomorrow we expect to discuss the financing of the Wilson Co. and the Armstrong Cork Co., and the witnesses will be Mr. Joseph R. Swan, head of the house of Smith, Barney & Co.; Mr. John M. Schiff, and Mr. Lewis L. Strauss, partners of Kuhn, Loeb & Co.

Acting Chairman WILLIAMS. That is all for the present? The committee will stand in recess until 10:30 tomorrow.

(Whereupon at 4:05 p. m. the committee recessed until Wednesday morning at 10:30 o'clock.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

WEDNESDAY, JANUARY 10, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:45 a. m., pursuant to adjournment on Tuesday, January 9, 1940, in the Caucus Room, Senate Office Building, Senator William H. King presiding.

Present: Senator King (acting chairman); Representative Williams; Messrs. Henderson, O'Connell, Lubin, and Brackett. Present also; Clifton Miller, Department of Commerce; Peter R. Nehemkis, Jr., special counsel; and W. S. Whitehead, security analyst, Securities and Exchange Commission.

Acting Chairman KING. The committee will be in order.

Mr. HENDERSON. Mr. Chairman, it is always difficult to indicate in a sentence the nature of a day's hearing, but today we will be concerned with typical examples as shown by two or three pieces of financing of the continuing relationship of some of the New York banks that had affiliates, and also we will be dealing with some aspects other than price competition that mark out the distinction between the investment banking business, or profession, as some choose to describe it, and the usual concept of competition as we see it in industry.

Mr. NEHEMKIS. Will Mr. Joseph R. Swan, Mr. John M. Schiff, and Mr. Lewis L. Strauss take the witness stand, please?

Acting Chairman KING. Mr. Swan, you have been sworn heretofore, so we will not need to re-swear you.

Will the other gentlemen raise their right hands?

Do you solemnly swear the testimony you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STRAUSS. I do.

Mr. SCHIFF. I do.

TESTIMONY OF JOSEPH R. SWAN, SMITH, BARNEY & CO., NEW YORK CITY; JOHN M. SCHIFF, KUHN, LOEB & CO., NEW YORK CITY; AND LEWIS L. STRAUSS, KUHN, LOEB & CO., NEW YORK CITY

Mr. NEHEMKIS. Will you state your full name and address, Mr. Schiff?

Mr. SCHIFF. John M. Schiff, Oyster Bay, N. Y.

Mr. NEHEMKIS. Are you not a partner of the firm of Kuhn, Loeb & Co.?

Mr. SCHIFF. I am a partner of the firm of Kuhn, Loeb & Co.

Mr. NEHEMKIS. How long have you been a partner of that firm?

Mr. SCHIFF. Since January 1, 1931.

Mr. NEHEMKIS. Mr. Strauss, will you state your full name and address, please?

Mr. STRAUSS. Lewis L. Strauss, 52 William Street, New York City.

Mr. NEHEMKIS. And are you not a partner of the banking firm of Kuhn, Loeb & Co.?

Mr. STRAUSS. I am.

Mr. NEHEMKIS. How long have you been a partner of that firm?

Mr. STRAUSS. Since January 1, 1929.

Acting Chairman KING. A partnership and not a corporation?

Mr. STRAUSS. That is correct.

Mr. NEHEMKIS. Mr. Swan, was not the account of Wilson & Co. once handled by the Guaranty Co., the security affiliate of the Guaranty Trust Co., of New York?

Mr. SWAN. It was handled by them in conjunction with others.

Mr. NEHEMKIS. And was that not the case also in the Pure Oil Co. financing?

Mr. SWAN. That was handled by Guaranty Co. alone.

Mr. NEHEMKIS. And in the case of Bethlehem Steel Corporation, was that handled by Guaranty Co. alone, or in conjunction with others?

Mr. SWAN. That was handled in conjunction with others.

Mr. NEHEMKIS. Do you recall the situation with respect to American Rolling Mill Co.?

Mr. SWAN. That was handled by the Guaranty Co. in conjunction with W. E. Hutton & Co.

Mr. NEHEMKIS. And in the case of the Armstrong Cork Co., Mr. Swan, was that not an account of Guaranty Co.?

Mr. SWAN. They were in that account. I think the account was, to my recollection, led by the Union Trust Co., of Pittsburgh.

Mr. NEHEMKIS. And Guaranty was joint manager?

Mr. SWAN. Very likely they were joint manager.

Mr. NEHEMKIS. Has not E. B. Smith & Co. either headed or participated in all of the foregoing accounts?

Mr. SWAN. They have, I believe.

Acting Chairman KING. Is that an investment banking company of New York—E. B. Smith & Co.?

Mr. SWAN. Edward B. Smith & Co. was a private partnership; it was not a corporation. It was a private company in New York, an investment company in New York.

Acting Chairman KING. What was the name?

Mr. SWAN. Edward B. Smith & Co., a firm which was originally formed in Philadelphia many years ago and has since transferred its principal office to New York.

FINANCING OF THE ARMSTRONG CORK CO.—1935 AND 1930 ISSUES

Mr. NEHEMKIS. Mr. Swan, I show you a document which bears the title "Calendar Record on Armstrong Cork Co." Will you examine this document and briefly describe its purpose to me?

Mr. SWAN. This document was kept by what we call our new business department and was a record of the various times when we

gave some attention to the company in question as to whether we should take some action in connection with them, or follow them up in some way. It was a record of our contacts with the company.

Mr. NEHEMKIS. Will you be good enough to examine the second sheet, which is labeled "Contacts with Armstrong Cork Co."? Will you be good enough to examine this sheet and tell me its purpose or function?

Mr. SWAN. This was another sheet kept by our new-business department to indicate what members of our firm were acquainted with and in contact with what members of some corporation we might be trying to do business with, or for whom we might be bankers.

Mr. NEHEMKIS. Would you say, Mr. Swan, that that practice of keeping such references is a generally prevailing one in the industry?

Mr. SWAN. I do not know.

Mr. NEHEMKIS. Mr. Schiff, have you been following the testimony?

Mr. SCHIFF. Yes; I have.

Mr. NEHEMKIS. Do you know whether it is the custom of your firm to keep records of progress of negotiations and of individuals who have special contacts with officials of various companies?

Mr. SCHIFF. I don't think it is the general practice of our firm; no.

Mr. NEHEMKIS. Now on or about July 25, 1935, did not E. B. Smith & Co. head a group of underwriters which brought out a public offering of \$9,000,000 15-year 4-percent debentures of the Armstrong Cork Co.?

Mr. SWAN. We brought out such an issue and I take your date as being the approximate date.

Mr. NEHEMKIS. You may, if you wish, Mr. Swan, accept my dates and figures subject to further check on your part.

Do you recall who composed the original purchase group?

Mr. SWAN. My recollection is that it was Edward B. Smith, Lazard Frères & Co.—

Mr. NEHEMKIS (interposing). Kidder, Peabody?

Mr. SWAN. Kidder, Peabody and Kuhn, Loeb.

Mr. NEHEMKIS. Now Kuhn, Loeb had a nonappearing position in that?

Mr. SWAN. That is correct.

Mr. NEHEMKIS. And by a nonappearing position is meant that the name of a particular house does not appear in the public advertising?

Mr. SWAN. I think that is correct.

Mr. NEHEMKIS. Now, to the best of your knowledge had Kuhn, Loeb ever been a participant in the financing of Armstrong Cork Co. when it had been led by the Guaranty Co.?

Mr. SWAN. I think not.

Mr. NEHEMKIS. Can you tell me that you are certain that it never was?

Mr. SWAN. I think I can go so far as to say I am certain; yes.

Mr. NEHEMKIS. And I think you indicated a moment ago that the Guaranty Co., along with Union Trust of Pittsburgh, had headed the financing previously.

Mr. SWAN. That is correct.

Mr. NEHEMKIS. And was not the last previous financing for the Armstrong Cork Co. an issue of \$14,931,000 of 10-year convertible 5-percent debentures due June 1, 1940, and offered in June of 1930?

Mr. SWAN. I think that is correct.

Mr. NEHEMKIS. And to the best of your knowledge and recollection, that was the last piece of financing that the Armstrong Cork Co. engaged in prior to the offering under the leadership of E. B. Smith.

Mr. SWAN. To the best of my recollection; yes.

Mr. NEHEMKIS. Do you recall when the 1935 negotiations for the Armstrong Cork financing began, approximately?

Mr. SWAN. I don't know exactly when the negotiations began. As soon as the various officers of Guaranty Co. who became partners of Edward B. Smith & Co. went into that new firm and took with them a large part of the Guaranty Co. organization, we immediately set out to see all of our old contacts; amongst others that we immediately contacted was the Armstrong Cork Co. From that time on we were in contact with them from time to time. We advised them, I think, at one time that a certain piece of business might be done, but I think we rather advised against doing it, and then later on we took up active negotiations for an issue, and exactly when we took up those negotiations I am afraid I couldn't say. We were in rather constant touch with them over a period.

Mr. NEHEMKIS. Would it be correct for me to state that the negotiations, discussions, conferences in the first instance, however, had been instituted by your people?

Mr. SWAN. Oh, I think so.

M. L. FREEMAN DISCUSSES ARMSTRONG FINANCING WITH KUHN, LOEB & CO.

Mr. NEHEMKIS. Mr. Schiff, are you familiar with a gentleman whose name is M. L. Freeman?

Mr. SCHIFF. Yes; I have made his acquaintance.

Mr. NEHEMKIS. And do you recall whether or not on or about July 27, 1934, Mr. M. L. Freeman had occasion to discuss with you the possibility of financing the Armstrong Cork Co. through the good offices of your banking firm?

Mr. SCHIFF. I believe he did.

Mr. NEHEMKIS. Mr. Freeman, in the parlance of the Street, is a "finder," is he not? That is to say, he brings prospective deals to investment banking firms?

Mr. SCHIFF. I don't know whether you would call him a finder. I think he is probably a sort of middleman that brings people together. I don't know quite what the correct term is.

Mr. NEHEMKIS. What do you regard him as?

Mr. SCHIFF. I said a middleman who brings people together.

Mr. NEHEMKIS. Now, just for my own information, what is the distinction between the person who is a "middleman" and one who is a "finder"? Perhaps there isn't any. If so, I would be glad to pass on. I just wanted to know, so I might be precise and accurate as I asked my questions of you.

Mr. SCHIFF. I suppose there is no terrific distinction. I just prefer my own definition.

Mr. NEHEMKIS. But you wouldn't object if I used the word "finder," would you? It wouldn't disturb you in any way?

Mr. SCHIFF. I just don't happen to like the word "finder," but that is a matter of preference.

Mr. NEHEMKIS. I will use for your benefit the word "middleman."

Now, in a subsequent discussion with Mr. Freeman, did he not say to you that the Armstrong Cork Co. had, after their 1930 financing with the Guaranty Co., attempted to borrow \$2,000,000 from the Guaranty Trust Co.?

Mr. SCHIFF. I believe he did; yes.

Mr. NEHEMKIS. And that the bank would only grant the company some \$500,000?

Mr. SCHIFF. I believe he claimed that.

Mr. NEHEMKIS. And as a result, did not Mr. Freeman state to you that the company was forced to borrow from certain Pittsburgh banks?

Mr. SCHIFF. I think Mr. Freeman stated that, as I remember.

Mr. NEHEMKIS. And as a result of that dissatisfaction, as Mr. Freeman indicated to you, with treatment received by the Guaranty Trust Co., the Armstrong people were a little bit loath to deal with those closely associated in the past with the Guaranty?

Mr. SCHIFF. That was what Mr. Freeman stated; yes.

SEEKING ASSURANCE THAT A COMPANY HAS MADE A "CLEAN BREAK" WITH ITS PRIOR BANKER BEFORE DISCUSSING FINANCING

Mr. NEHEMKIS. After the passage of the Banking Act, Mr. Schiff, was it not generally recognized in the Street that E. B. Smith & Co. had become the successor or heir of the Guaranty Co.?

Mr. SCHIFF. I think it was generally recognized that the chief officers and the main part of the staff of the Guaranty were going into E. B. Smith & Co.

Mr. NEHEMKIS. Did you not yourself recognize E. B. Smith & Co. as the successor to the Guaranty Co.?

Mr. SCHIFF. We recognized that the individuals of E. B. Smith had the contacts that they had while they were in the Guaranty.

Mr. NEHEMKIS. You were aware, were you not, at the time of your conversation with Mr. Freeman that the Armstrong business had been an account of the Guaranty Co.?

Mr. SCHIFF. I was aware either at that time or shortly afterwards, after I looked it up.

Mr. NEHEMKIS. When it was presented to your mind you were aware of that fact?

Mr. SCHIFF. Yes.

Mr. NEHEMKIS. Now, in view of the fact that the Armstrong Cork account had been a former account of the Guaranty Co., and in view of the fact that you and your associates recognized that E. B. Smith & Co. had certain relationships to that account, were you not somewhat reluctant to discuss this matter with Mr. Freeman?

Mr. SCHIFF. Well, I think we told Mr. Freeman that after all, any company could pick its own bankers, it was entirely up to the company—

Mr. NEHEMKIS. But—

Mr. SCHIFF. May I go on with that—that if the company wanted to leave the people who had done their banking in the past, for some legitimate reason, naturally we should be glad to receive them provided they were the type of company that came up to our standards, but, on the other hand, if it was a perfectly happy relationship and

they had been successful in taking care of their needs and had done it properly, we had not desire to try to take that away from them.

Mr. NEHEMKIS. Mr. Schiff, according to the professional code of the Street, would it not have been distinctly unethical for you to discuss this business with Mr. Freeman without first contacting E. B. Smith & Co., or unless you were quite certain that the company was coming to you of their own free will?

Mr. SCHIFF. I think it would have been bad business.

Mr. NEHEMKIS. But not unethical?

Mr. SCHIFF. Well, unethical and bad business, but after all you have a certain code of ethics, which I agree with, but you also are guided by what is good business and what is bad business.

Mr. NEHEMKIS. But you do think that it would have been distinctly unethical to have discussed this with an official of the Armstrong Cork Co. without first having been in contact, let us say, with Mr. Swan's house?

Mr. SCHIFF. I think it would have been unethical and bad business, just as if some dentist called me on the telephone and said, "I hear you want a tooth pulled," and tried to get the trade away from my usual dentist who had been doing a satisfactory job.

Mr. NEHEMKIS. So you feel that under similar circumstances it would be necessary, if one were adhering to the code of ethics of the Street, first to be clear of the other banking firm.

Mr. SCHIFF. But I want to point out one thing. It is not only the code of ethics; it is what is good business, what is good business and bad business for the continuation of your future business with your clients.

Mr. HENDERSON. With your clients and with other members of the fraternity, too?

Mr. SCHIFF. I suppose so, but I mean basically with the corporations with which you deal.

Acting Chairman KING. And if you established a reputation of trying to undermine other companies and steal the business away from them it would injure your own business.

Mr. SCHIFF. It would injure our own business certainly, just as much as if a doctor tried to steal patients; eventually he wouldn't have any patients at all.

Acting Chairman KING. Just like several lawyers dissolve and if they knew that the business of A, B, and C corporation was left with one member of the firm that had been dissolved, you would regard it perhaps as unethical to go to them and attempt to take it away from the one to whom it had been assigned and who had conducted it during the period of the partnership.

Mr. SCHIFF. I think that is fair.

Mr. NEHEMKIS. Mr. Schiff, unless you had such unequivocal assurance from the other firm that had prior association with the business, your firm would have been placed in the position of entering into competition with, shall I say, a friend, and such competition would not be considered desirable? I take it that is the situation?

Mr. SCHIFF. No; I don't think it is. I think we are willing to compete at any time when a corporation is dissatisfied with its existing banking relations. We want to do new business, we are anxious to do it, but we see no point in trying to break up what is considered a happy relationship.

Mr. NEHEMKIS. I think you didn't quite understand my question, and I may not have made it as clear as it could be. In the situation that we are now discussing, the case of Mr. Freeman coming to you and telling you, "Here is a piece of business that I think you people might be interested in," under the code of ethics as adhered to by your firm and presumably by others, you do not feel free to discuss that with the company officials unless two things occurred: you were assured that the company was clear of E. B. Smith & Co., or, on the other hand, that you had first discussed it with E. B. Smith & Co. to make quite certain that further discussions would be satisfactory. Does that substantially summarize the ethical problem there?

Mr. SCHIFF. I think we would say that we wouldn't want to discuss it unless we had every assurance that the company had made a clean break with E. B. Smith & Co.

Mr. NEHEMKIS. Now, if those circumstances were not present in this situation, then you would be in the position, would you not, of competing for business against a friend—

Mr. SCHIFF. No.

Mr. NEHEMKIS. And that is not desirable.

Mr. SCHIFF. No; we would be in the position of breaking up a relationship that had been perfectly satisfactory.

Mr. NEHEMKIS. Now, perhaps you and I are having some difficulties about the use of words. I used the word "competing." You seem to be very allergic to that word so I will try and use another one. If you had actively continued discussing this piece of business with officials of the Armstrong Cork Co., knowing that it was a former Guaranty account and hence by inheritance, so to speak, within the sphere of interest of E. B. Smith, that would not have been desirable from a business point of view. Do you follow me on that?

Mr. SCHIFF. I don't think it would have been desirable because if we did it enough we would end up with no corporations doing business with us at all.

Mr. HENDERSON. May I ask a question there? Would you be willing to say that it was unethical competition?

Mr. SCHIFF. I am not quite sure of the definition of the word "ethical" that keeps being brought in all the time. I am looking at it from the point of view of what is a sensible way to run your business. I think it would be bad business to do it. Certainly I think morals and ethics come in. It is just as unethical as it is in any profession.

Mr. HENDERSON. Take the condition existing after the divorce when these accounts presumably might be free. If you went out after any of those accounts, would you be competing for them?

Mr. SCHIFF. Certainly that is competing; yes.

Acting Chairman KING. As I understand the situation, if E. B. Smith & Co. had been doing business with the Armstrong Cork Co. and floated its securities, and the time had come when the situation developed that Armstrong Cork wanted to deal with somebody else and some representative came to consult with you, you would, before you would take that business, desire to know whether the relations between E. B. Smith & Co. and the Armstrong Co. had been severed whether there were any obstacles, ethical or moral or in a business way, to your becoming a competitor with E. B. Smith & Co. in negotiating a deal with the Armstrong Co. to handle their securities.

Mr. SCHIFF. I think that is generally true. We are willing to compete where there is a complete break, but not where there is a continuous and happy relationship as between lawyer and client, doctor and patient.

Acting Chairman KING. But if you were satisfied that E. B. Smith & Co. would be willing to have others associated with it and the Armstrong Co. were perfectly willing to have others brought into the handling of their securities, would there be any objection from your point of view to your organization becoming, shall I say, a competitor or a partner or cooperating with the E. B. Smith & Co. in handling the new issue or refunding the issue?

Mr. SCHIFF. No; I think not.

Mr. NEHEMKIS. Mr. Schiff, I show you a memorandum which purports to bear your initials. Will you examine this memorandum and tell me whether these are your initials and whether this memorandum was, in fact, dictated by you on or about July 27, 1934?

Mr. SCHIFF. Yes.

Mr. NEHEMKIS. I want to read to you a statement you wrote in this memorandum, Mr. Schiff. [Reading from "Exhibit No. 1858"]:

Yesterday Mr. M. L. Freeman discussed with me the possibility of doing some financing for the Armstrong Cork Company, with which he has a connection. I told him that I would discuss it here in the office, and asked him to return today.

Having checked up on the Company and found that the original financing had been done by the Guaranty Company, I explained to Mr. Freeman that the Guaranty Company's successor was E. B. Smith & Co. and that naturally we did not want to poach on their preserves.

I venture to say, Mr. Chairman, that that statement epitomizes the entire problem that we have been discussing and presenting to you during these past several days. I am, indeed, very grateful to Mr. Schiff for having summed it up so neatly, so succinctly, for having made such an excellent presentation of a rather difficult problem.

Then you continue, Mr. Schiff, as follows. [Reading further from "Exhibit No. 1858"]:

I told him that provided he explained in detail to the company that they were coming to us of their own free will, we should be pleased to have a talk with them if he would bring in one of their senior officers the next time he was in New York, which he agreed to do.

Mr. Chairman, may the document identified by the witness be presented in evidence?

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1858" and is included in the appendix on p. 12776.)

TRADITIONAL ATTITUDE OF KUHN, LOEB & CO. TOWARD COMPETITION WHERE A SATISFACTORY BANKING RELATIONSHIP EXISTS

Mr. NEHEMKIS. Mr. Schiff, hasn't the position to which you have given philosophic expression in your memorandum been the traditional attitude of the house of Kuhn, Loeb?

Mr. SCHIFF. I think the traditional attitude of the house of Kuhn, Loeb has been as I just stated a few minutes ago. I probably can't restate it in the same terms, but generally that the corporation has the right to choose its own bankers, it is not tied in any way, it is entirely in the hands of the corporation; that if they want to change

bankers that is their privilege, but as long as there is a satisfactory relationship between the corporation and its bankers we are not going to try to steal it away from them, but we are willing to compete openly for any unaffiliated corporation or any corporation that is dissatisfied with its existing relationship.

Mr. NEHEMKIS. Was not that the position of your father, Mortimer Schiff?

Mr. SCHIFF. He is no longer living; it is very hard for me to speak for him.

Mr. NEHEMKIS. You don't know, however, whether he had occasion to also express that view?

Mr. SCHIFF. I hope that was his position.

Mr. NEHEMKIS. Was it not also the position of your late, distinguished grandfather, Jacob Schiff?

Mr. SCHIFF. He died while I was still at school, so I can't tell you. I don't know whether he had that point of view.

Mr. NEHEMKIS. May I ask Mr. Strauss, who has been associated with the firm a little longer than you, whether or not the position of Mr. John Schiff epitomized also the philosophy and position of Mr. Jacob Schiff?

Mr. STRAUSS. It was.

Mr. NEHEMKIS. Was it not also the position of Mr. Mortimer Schiff?

Mr. STRAUSS. It was. It might be stated, however, by way of amplification, that a change, a direct change in banker relationships of a corporate borrower was regarded by Kuhn, Loeb & Co. as contrary to the best interests of the public, the investing public, in that it made it impossible for a continual flow of banking advice to the borrower from one source.

Mr. HENDERSON. May I ask a question? Mr. Strauss, how did the investment banking fraternity regard a company that shifted around?

Mr. STRAUSS. I can't speak for the fraternity.

Mr. HENDERSON. How did your house regard it? Did you have a sort of danger signal up?

Mr. STRAUSS. Well, I might illustrate it by an anecdote or an instance, if you will permit me, that is fairly illustrative. Several years ago—I can't recall the date—the same intermediary or middleman brought the president and one of the junior officers of a corporation to see me, stated they wished to change their bankers, and upon their departure, I looked over their list of directors and found on their directorate a member of a banking firm whom I called to inquire about the circumstances, and who told me that they were in negotiation with that firm, whereupon we declined to have anything to do with it. The concern was McKesson & Robbins, and the banker in question was our mutual friend Mr. Weinberg.

I think the adventitious change of bankers without good cause is a sufficient red flag to a conservative banker to make him wish to know more about the situation.

Mr. HENDERSON. You wouldn't say, though, that everyone who wants to change bankers probably has something in his inventory.

Mr. STRAUSS. No; by no means; by no means; but in any event, a careful banker would wish to know why.

Mr. HENDERSON. Do you think in this case that McKesson & Robbins wanted to change because they felt that the continuing relationship with Goldman, Sachs would disclose a fake inventory?

Mr. STRAUSS. I can't imagine what was in their mind in that instance.

Mr. HENDERSON. I was just wondering what was in your mind about it, because you used it as the instance.

Mr. STRAUSS. I have engaged in many speculations, but I don't think any of them would be proper for the record.

Mr. NEHEMKIS. Mr. Strauss, are you not regarded as the expert in your firm on Youngstown Sheet & Tube Company matters?

Mr. STRAUSS. The habit in our firm is for all the partners who are in the office at the time to be fairly familiar with transactions.

Mr. NEHEMKIS. Is that a general practice in your firm?

Mr. STRAUSS. Yes; that is usually the practice where the number of partners are few.

Mr. NEHEMKIS. In other words, Mr. Schiff, then, would be as familiar, let us say, with Armstrong Cork as any of the other partners?

Mr. STRAUSS. Not necessarily; he might have been away at the time, or particular details of the transaction might have been handled by one or another, but there is no attempt to make an expert of any partner.

Mr. NEHEMKIS. For example, your firm differs in that respect from J. P. Morgan & Co. when it was in the investment banking business and had certain partners who were specialists in Telephone affairs and railroad affairs, and that sort of thing.

Mr. STRAUSS. I am unable to testify as to that, sir.

Mr. NEHEMKIS. You are familiar with Youngstown Sheet & Tube matters, aren't you?

Mr. STRAUSS. Yes.

Mr. NEHEMKIS. I ask you to examine a memorandum dated November 18, 1927; which was apparently written by Mr. Jerome Hanauer. It bears the imprint of your stamp, Kuhn, Loeb & Co. For the sake of the record, will you be good enough to identify it for me, please?

Mr. STRAUSS. It appears to be a fairly long memorandum, Mr. Nehemkis, and I came down prepared on Armstrong Cork and Lino-leum. I didn't know you wished me to testify with respect to this memorandum.

Mr. NEHEMKIS. I shan't ask you any question on it.

Mr. STRAUSS. The memorandum is one bearing Mr. Hanauer's initial.

Mr. NEHEMKIS. That is fine, sir. Thank you very much.

I note back in 1927 this same mysterious middleman, finder or entrepreneur also was in to see your firm in regard to Youngstown Sheet & Tube matters. Let me read you, Mr. Schiff, from a memorandum by Mr. Hanauer as of November 18, 1927. [Reading from "Exhibit No. 1859":]

Mr. Seward Prosser, late in the afternoon of November 17th, telephoned to me asking whether he could come around to see me and a few minutes afterwards he came. Mr. Prosser—

Would you identify Mr. Prosser for the record?

Mr. STRAUSS. Mr. Prosser was chairman of the board of directors.

Mr. SWAN. Chairman of the board at that time.

Mr. NEHEMKIS [reading further]:

Mr. Prosser stated that he understood we were negotiating for the Youngstown refunding, and that he, realizing our usual practices, and our friendship for his company, felt we were negotiating under a misapprehension of the Bankers Trust Company's position; that the Youngstown Company and Mr. Campbell, the President, were the closest friends of the Bankers Trust Company, that Mr. Samuel Mather was a director of the Bankers Trust Company and it would be a great blow for the Trust Company if they should lose this business. * * * In reply I told Mr. Prosser that this matter had been suggested to us originally many months ago by an intermediary and we had at first ridiculed the suggestion, saying to the intermediary that the Bankers Trust Company was the banker of the Youngstown Company. The intermediary insisted that this was not so and that Mr. Campbell would like to do the business with us. We declined to discuss the matter any further with the intermediary and stated that we could only consider the matter if these things were stated to us directly by Mr. Campbell.

Continuing with the memorandum,

Mr. Schiff—

And this is Mr. Schiff's father—

came into the room at about this time and most of what was said above was repeated on both sides—Mr. Prosser emphasizing what a blow it would be to his Trust Company to lose this business and Mr. Schiff emphasizing how we had made every effort to be sure that we were not competing with them. I stated that while we never competed for business, we of course would not take the position that if a corporation came to us and told us they were free that we would not deal with them.

That pretty much sums up the historical position, does it not, of the house of Kuhn, Loeb by Mr. Schiff?

Mr. STRAUSS. Mr. Nehemkis, of course, you are noting that you have omitted part of a paragraph there, and that is not a continuation of the memorandum.

Mr. NEHEMKIS. I am offering for the record the entire document. May it be received?

Acting Chairman KING. Yes.

(The document referred to was marked "Exhibit No. 1859" and is included in the appendix on p. 12776.)

Mr. NEHEMKIS. I asked a question, I believe, of Mr. Schiff and I don't believe the record shows any answer.

Mr. SCHIFF. What was the question again, please?

Mr. NEHEMKIS. The question was, did not the various excerpts I read pretty much sum up the historical position of the house of Kuhn, Loeb on the problem of competing or not competing?

Mr. SCHIFF. They wouldn't compete except where there was dissatisfaction. As a matter of fact, I wasn't with Kuhn, Loeb at that time; I was working for the Bankers Trust Co. at that time.

Mr. NEHEMKIS. The Bankers Trust Co.? How interesting!

Acting Chairman KING. If an issue were brought to the Street by a corporation from any part of the United States, and its representatives were seeking a house or an investment company that would take charge of their securities and dispose of them, I suppose that your house and any other investment house would feel at liberty to compete in the market for that business.

Mr. SCHIFF. Provided the corporation would have the standing of securities that we would be willing to offer to the public, a corporation of proper standing.

Acting Chairman KING. I am assuming that the securities which it would offer would be meritorious.

Mr. SCHIFF. Yes, sir.

Acting Chairman KING. But if the person should come to your house and state that he or his firm had been doing business with the Jones Investment Co., and that their relations were strained, and they didn't care to continue with the Jones Co., you would feel at liberty, then, to investigate the character of these securities with a view to deciding whether your house would undertake to negotiate?

Mr. SCHIFF. Yes, sir; we would.

Mr. O'CONNELL. I am not entirely clear on that. As I understood your prior testimony, it was to the effect that if an industrial concern or a prospective issuer came to your firm and was considering using you as a banker, you would first ascertain what its former banking connection was and would not discuss the situation with their company until you had ascertained the connection between the former banking connection and the issuing concern was no longer in your judgment satisfactory.

Mr. SCHIFF. If he told us he was no longer satisfied, we would take the word of the senior officer of the corporation.

Mr. O'CONNELL. You wouldn't contact the other bankers?

Mr. SCHIFF. I don't think—we might, we might not; I think circumstances alter cases. It is hard to lay down a hard and fast rule on that.

Acting Chairman KING. Would there be a different rule—and I am asking to make clear the distinctions which may be made in connection with your testimony and with the testimony of those who have preceded—would there be an analogy between the banking fraternity and the legal fraternity? Suppose that you were a lawyer and some prospective client came and stated that his firm was Jones & McLaughlin, that they had been his lawyers for many, many years, but he desired to disassociate himself from them and to get other lawyers. Would not a reputable lawyer, before taking over their business, call up Jones & McLaughlin to ascertain whether or not the relation of the client and the attorney still existed?

Mr. SCHIFF. I believe they would; I believe that is a very fair comparison, sir.

Acting Chairman KING. But if the relation did not exist, if they had broken off, then a reputable lawyer under the highest form of ethics would not feel debarred from taking on that business.

Mr. SCHIFF. That is correct, sir.

Mr. O'CONNELL. Mr. Schiff is not a lawyer, and I happen to be, and I am not so sure that a reputable lawyer, if approached by a prospective client, would be under any duty to determine that a change was satisfactory not only to the prospective client but also to the former attorney.

Acting Chairman KING. Well, then, you may differ from me. I have been a lawyer, and when a person would come to me to bring business and would tell me Jones & Co. had been their lawyers for years, that they had broken with them, I would feel at liberty to take their business, although I invariably would inquire of Jones & Co. whether that was a fact, that they had broken and they had paid their obligation, so that the relation between them no longer existed.

I didn't want my client to be sued by some other lawyer because he failed to pay his bill.

Proceed.

Mr. O'CONNELL. That is a very practical aspect of the problem.

PAYMENTS BY KUHN, LOEB & CO. TO M. L. FREEMAN

Mr. NEHEMKIS. Mr. Strauss, before leaving the matter of Youngstown Sheet & Tube Co., I would like to ask you a few questions about it. We have been speaking of this middleman or entrepreneur M. L. Freeman. I note that he comes into the Youngstown Sheet & Tube picture as far as your firm is concerned as early as the year 1927. Did he not in that year receive a payment from Kuhn, Loeb & Co. of some \$75,000?

Mr. STRAUSS. Yes; he did.

Mr. NEHEMKIS. Was that in connection with bringing you the Youngstown Sheet & Tube business?

Mr. STRAUSS. The question of whether he brought the business or not, Mr. Nehemkis, is a moot point. In any event, we felt sufficiently indebted to him for his services to pay him that.

I would like to comment on just another question. You referred to him as a "man of mystery." He is hardly that, he is very well known in Wall Street and in many other institutions besides those which have been mentioned today.

Mr. NEHEMKIS. I think before the testimony ends, we will see he is very well known elsewhere.

Mr. HENDERSON. I think, if I may interpret, counsel had in mind the mystery as to whether he was intermediary, finder, or middleman, and when you say it is a moot question whether he was paid a finder's fee, it still leaves it a mystery.

Mr. NEHEMKIS. In any event, in 1936 did not Mr. Freeman also receive payment of \$20,000 from Kuhn, Loeb & Co. in full settlement of his services to date?

Mr. STRAUSS. He did. I don't recall the date but you have the figures before you.

Mr. NEHEMKIS. And was that not also in connection with the Youngstown Sheet & Tube matter?

Mr. STRAUSS. That was in connection with a great multitude of services. Mr. Freeman favored us with suggestions of scores of pieces of business which may or may not have been feasible. They were not for us. But he exhibited a degree of good will that seemed to me to warrant that compensation.

Mr. NEHEMKIS. It is interesting to observe, however, that apparently for internal purposes in your office, you regarded that \$20,000 payment in 1936 as referring to Youngstown Sheet & Tube matters, because your letter of transmittal of your check appears in your files under Youngstown Sheet & Tube.

Mr. STRAUSS. That is correct. It wasn't possible to allocate it against the profits of businesses that didn't eventuate.

Mr. NEHEMKIS. Now didn't your firm bring out an offering for Youngstown Sheet & Tube about that time?

Mr. STRAUSS. I don't recall the dates, Mr. Nehemkis. As I said to you, I wasn't prepared to testify, on Youngstown financing, but those dates are of record, so it is quite easy to ascertain them.

Mr. NEHEMKIS. On April 23, 1936, an offering of \$60,000,000 first mortgage bonds and \$30,000,000 of debentures was made public. Now you were the leader of that financing, were you not, I mean K. L.?

Mr. STRAUSS. Unfortunately, I am asked to testify now about something which is a matter of record, but I don't have the facts before me.

Mr. NEHEMKIS. Then suppose you accept these matters of public record as I indicate them to you, subject to confirmation.

(Off the record colloquy between Mr. Nehemkis and Mr. Swan.)

Mr. NEHEMKIS. Now, Mr. Strauss, as one of the principal underwriters of that financing, were you not under a responsibility to have disclosed in your registration statement under item 25 that Mr. M. L. Freeman had received a fee of \$20,000?

Mr. STRAUSS. No more than any other of our expenses. This wasn't an expense of the business.

Mr. NEHEMKIS. What was it, then?

Mr. STRAUSS. It was a part of our own expenses.

Mr. NEHEMKIS. And this \$20,000 fee was charged up to your own expenses?

Mr. STRAUSS. That is right, and not to the business.

Mr. NEHEMKIS. If it had been charged up to the business, you would have had to disclose it.

Mr. STRAUSS. I don't know what the legal requirement there is, but certainly he had nothing to do with the transaction at all. This was a compensation paid in respect of this and other services and was paid entirely as an expense of Kuhn, Loeb & Co.

Mr. NEHEMKIS. Now is it your contention, Mr. Strauss, that the payment of \$20,000 to the gentleman whom we have been designating M. L. Freeman, was not a finder's fee?

Mr. STRAUSS. Yes; it is my contention that it was not.

Mr. NEHEMKIS. That it was not a finder's fee?

Mr. STRAUSS. That is right.

Mr. NEHEMKIS. Can you enlighten me at this time as to the nature of the services rendered by M. L. Freeman in 1933

Mr. STRAUSS. In connection with that transaction he performed no services whatever. In fact, I doubt if he knew anything about it until he read it in the press.

Mr. NEHEMKIS. And for his performing no services you were prompted to pay him \$20,000?

Mr. STRAUSS. No.

Mr. NEHEMKIS. Then what did you pay him for?

Mr. STRAUSS. If you refer to the answer I made to a previous question,¹ I indicated over a period of years he has on many occasions proposed business to us, and he has proposed to us business that wasn't always feasible. Sometimes it was feasible for others. And in order to compensate him for those services and so, shall I say, insure his continued goodwill, this payment was made.

Mr. NEHEMKIS. Will you be good enough to explain to me, then, Mr. Strauss, why this letter of transmittal sending Mr. Freeman a check of \$20,000 appears in the files, "*Re* Youngstown Sheet & Tube Company?"

¹ Supra, p. 12489.

Mr. STRAUSS. I have seen that letter and pencil notation, and outside of the fact that there was no other place to file it, I can't account for the pencil notation.

Mr. NEHEMKIS. Would it be a reasonable hypothesis for me to make that conceivably this may have been Youngstown business? You indicate a certain vagueness as to why it should have been filed under Youngstown Sheet & Tube. May there not be some gaps in your recollection as to whether or not it was Youngstown business?

Mr. STRAUSS. No; it seems to me perfectly reasonable this man having been responsible, so far as I was concerned, for the initial Youngstown transaction, and this transaction having been not a direct continuation of it but nevertheless a contract with the same company, that some recognition of that might be appropriate even though it were not requisite.

PROFESSIONAL CHARACTER OF INVESTMENT BANKING

Mr. NEHEMKIS. By the way, and digressing for a moment, is it your opinion, too, Mr. Strauss, that investment banking is a profession and analogous to that of the lawyer's profession?

Mr. STRAUSS. With some fine nuances of distinction, I have always regarded banking as a profession in the same way as the medicine, and the law; yes, sir.

Mr. NEHEMKIS. Now, you have dealt with lawyers, I assume, for many years in connection with your business. What would you think of lawyers who paid fees to other people for having brought business to them?

Mr. STRAUSS. I don't know as I ever heard of such an instance.

Mr. NEHEMKIS. Have you ever read "The Canons of Legal Ethics" by chance?

Mr. STRAUSS. No; I have not.

Mr. NEHEMKIS. Have you, Mr. Schiff?

Mr. SCHIFF. No.

Mr. NEHEMKIS. Have you, Mr. Swan?

Mr. SWAN. No.

Mr. NEHEMKIS. Isn't this curious? How does it all happen that you use the analogy of the relationship of the banker to his clients as corresponding to that of the lawyer to his clients—and, incidentally, the committee will recall that Mr. Whitney used that analogy, Mr. Sidney A. Mitchell used that analogy, Mr. Walter Sachs used that analogy, and Mr. Charles E. Mitchell, and I think Mr. Leib, and possibly others. Isn't that curious?

Mr. STRAUSS. Might I state what I think the analogy is? The analogy is, sir, that the choice is the choice of the client and that the relation is one of confidence.

Mr. NEHEMKIS. Now you say you have never read "The Canons of Legal Ethics." Do you know there is a provision in "The Canons of Legal Ethics" that expressly forbids a lawyer from paying money to a third party for bringing in business? And as a matter of fact, if I recall—and there are more distinguished lawyers sitting at the bench here—we use a rather ugly term for anyone who does that. Mr. O'Connell, don't we call that "ambulance chasing"?

Mr. O'CONNELL. That is right.

Mr. STRAUSS. Mr. Nehemkis, aren't there great differences between all the professions? For example, I am sure you would agree there is no question that both the law and medicine are professions, but no doctor would permit himself to be put up on the stand and questioned, for example, on the private affairs of a patient. There are these differences between the relationships—

Mr. NEHEMKIS (interposing). May I interrupt a moment because I think you have raised a rather interesting point. Simply because no doctor or no lawyer, by the recognized concepts of society, is permitted to be subjected to the kinds of, shall I say, indignities that the members of your profession are subjected to by people like myself, is plain recognition of the fact that society does not regard your profession as a profession in the same fashion that it regards the medical profession or the legal profession.

Mr. STRAUSS. The professor of that profession may have a better opinion of it than society.

Mr. NEHEMKIS. That is possible.

Mr. HENDERSON. Since this has been raised, Mr. Strauss, do you regard investment banking as a competitive profession? Is there competition in it?

Mr. STRAUSS. Within the limits of the definition of the term; we know that there is competition required by law in some instances, we know there is voluntary competition in others. I don't know just what you mean, Mr. Henderson.

COMPETITION IN INVESTMENT BANKING

Mr. HENDERSON. I think it is very pertinent since things have frequently come up during this hearing which would be a little bit quaint in competition. The investment banking witnesses have invariably said, "Ours is a profession," and every time we were directly on the point of competition we have been assured that the most vigorous competition prevades the investment banking business.

Now I am not qualified—I take it that you didn't undertake to be qualified either—to pass on the canons of the legal profession, but I think that I am reasonably qualified to test competition, and I am frankly between the two horns of a dilemma, and so we might say it is a competitive profession. Do we want to say that?

Mr. STRAUSS. I don't want to get myself in the position where I am speaking for the investment banking community. I am not qualified to do so. I can only tell you how I personally regard it, and I would attempt to answer your questions in the first person if they were put in the first person singular.

Mr. HENDERSON. Put them in the first person. What do you say? Do you regard it as a competing profession?

Mr. STRAUSS. I do in this sense, Doctor—

Mr. HENDERSON (interposing). I am not a doctor. I have preserved my virginity for a good many years. I don't propose to lose it at this distinguished table. [Laughter.]

Mr. STRAUSS. I will answer that off the record. [Laughter.]

We are obviously in competition with all other investment bankers in that our brains and our experience are for sale. Our shingle is out. The prospective borrowers know that. That is the kind of competition that is going on day and night. However, we don't

send a catalog of baby carriages every time we see a wedding announcement in the paper—following up your expression, to extend your metaphor.

Mr. MILLER. May I ask a question? Isn't the distinction, Mr. Strauss, that you are trying to make in answer to Commissioner Henderson's question as to competition, this, that in the investment banking business you are selling services, whereas in ordinary commerce and businesses, commodities are being sold? Isn't that the distinction that you attempted to make?

Mr. STRAUSS. If you will add to your point that we also take risks.

Mr. HENDERSON. Well, do I understand then that accepting Mr. Miller's suggestion with your addendum, you feel that any service industry is entitled to be outside the frame of competition?

Mr. STRAUSS. I am sorry, I didn't follow that.

Mr. HENDERSON. Well, the cleaning and dyeing industry sells a service, the barber sells a service, and we had in N. R. A. a long line of service codes that presumably were under the regulation of competition. Now none of them, of course, put themselves on the plane of the investment banker, but they were certainly selling services, and it was not considered unethical to go after an account. In fact, in the automobile industry, for example, there is no such thing, as I recall, as a successor to a business; there is no question asked even in the steel industry whether U. S. Steel had formerly gotten the business if Mr. Weir wants to go after it.

Now, even if this were a selling of services, certainly all the ideology that surrounds American competition would be applicable, would it not?

Mr. STRAUSS. Perhaps it is my unfamiliarity with the subject—I don't know what the ideology surrounding American competition is.

Mr. HENDERSON. And I gather that is true of a lot of the investment bankers who have been down here.

Mr. STRAUSS. I don't think so, Mr. Henderson, because the attitude of the investment banking fraternity toward competition is a relative thing. Some institutions are more aggressive than others, and an answer that I might make as to our attitude wouldn't at all be applicable to the whole industry.

Mr. HENDERSON. Now let's suppose there were—I guess you didn't like "fraternity"—in the competitive profession of investment banking two or three firms which were more competitive, relatively. Aren't they working in a decidedly shrunken field when there is the captive company, you might say, the continuing relationship over a long period of years, when there is the reciprocal obligation passing all the time, and when there is the regard for business in its traditional relationship such as we have instanced here today, where you will not touch it unless the company declares itself free? Aren't they working in a decidedly shrunken area?

Mr. STRAUSS. No. In the first place, I don't know of a captive company, speaking only of my own experience. We have no contractual relation with any client that compels them to deal with us. As far as the more aggressive banker working in a restricted area, I think the record of the financing of the last year would bear me out that that is not the case.

Mr. HENDERSON. Right on that point, are you sure that there are no frozen accounts with K. L.?

Mr. STRAUSS. I don't know what a frozen account is.

Mr. HENDERSON. Maybe I will have to get Charlie Mitchell's definition for you, then. But aren't there accounts that over a long period of years have stayed with K. L.?

Mr. STRAUSS. We are very proud of the fact that over a long period of years some clients have continued to use us as their bankers, but there has never been any compulsion and frequently many months go by without even consultation.

AGREEMENTS FOR FUTURE FINANCING BETWEEN UNDERWRITERS AND
BETWEEN ISSUER CORPORATIONS AND UNDERWRITERS

Mr. HENDERSON. Leaving apart the fact that there is no obligation on the company, do you not have contracts as do other houses for the future financing of business?

Mr. STRAUSS. None, none.

Mr. HENDERSON. Have you been following the testimony before this committee?

Mr. STRAUSS. I have not; except in the newspaper.

Mr. HENDERSON. Have you seen the references to the contracts for future financing?

Mr. STRAUSS. No; I don't think I have.

Mr. HENDERSON. We had one yesterday, Cleveland-Cliffs, where a part of the underwriting undertaking did envision going forward for all future financing. Then there is A. T. & T.

Mr. STRAUSS. You mean as between the underwriters?

Mr. HENDERSON. Yes.

Mr. STRAUSS. I saw some letters as I came in this morning that had been distributed yesterday. It seemed to me that perhaps was an arrangement that was subject entirely to the continued approval of the borrower, because, as I understand it, it is the borrower that allocates the participation.

Mr. HENDERSON. In this case it was not that. This was a little unusual, because we had the veto power in the management in the Cleveland-Cliffs case by virtue of a board of directors' letter to the underwriters. But there have been over a period—I think counsel could recite these better than I—numerous contractual relationships between the underwriting houses for continued financing.

Mr. STRAUSS. We have no such.

Mr. NEHEMKIS. May I interrupt to point out, perhaps refresh Mr. Strauss' memory, that I had occasion to offer in evidence at the end of the hearing the day before yesterday an agreement, an understanding, if you will, between Kuhn, Loeb & Co. and the Guaranty Company of New York at the time that Mr. Swan was president of that company with reference to American Smelting & Refining Company financing.¹ I had occasion yesterday to offer in evidence before this Committee, and we listened to much discussion on a memorandum² written by Mr. Strauss in connection with Cleveland-Cliffs Iron Company financing pertaining to mutual arrangements—

Mr. STRAUSS (interposing). Between the underwriters; and all those things, Mr. Nehemkis, are subject to the borrower.

¹ "Exhibit No. 1848."

² "Exhibit No. 1833."

Mr. NEHEMKIS. Let me finish my sentence. An arrangement between the underwriters pertaining to the future financing of the Cleveland-Cliffs Iron Company, and if my recollection serves me correctly, Kuhn, Loeb is involved in some other arrangements of that sort involving underwriters.

Mr. STRAUSS. There may be many such, but none of those are binding on the borrower.

Mr. HENDERSON. Your answer to me was that you had no such with other underwriters; that is what I understood.

Mr. STRAUSS. There is a misunderstanding between us, then.

Mr. HENDERSON. Assume that you have these contracts as far as future financing is concerned—

St. STRAUSS (interposing). I wouldn't call them contracts, there is nothing enforceable in connection with any of them.

Mr. HENDERSON. Let's make it understandings.

Mr. STRAUSS. Precisely.

Mr. HENDERSON. And the testimony here has shown that you are probably better off with an understanding than you would be with a contract.

Mr. STRAUSS. Is that a question?

Mr. HENDERSON. I will make it a statement. I would say that the testimony as to the 60 companies covered by the Goldman, Sachs-Lehman Brothers treaty did show that one of those accounts passed, which to me is at least one of the indicia of competition. Now, with these contracts you have, with the attitude towards not competing so long as the banking relationship has not been abandoned by the company, would you not agree with me that the area of vigorous competition open to an investment banker has considerably shrunk?

Mr. STRAUSS. Why, no, Mr. Henderson, because if you will take the instance to which you have referred, you or Mr. Nehemkis, as having come up on yesterday or the day before, of the four firms who were in that particular piece of financing, Cleveland-Cliffs, the percentage of the banking area involved in that was infinitesimal compared with the total picture.

Mr. HENDERSON. Investment banking?

Mr. STRAUSS. Yes.

Mr. HENDERSON. The 1926 treaty for the Goldman, Sachs-Lehman agreement involved \$200,000,000 and 60 firms.

Mr. STRAUSS. I know nothing about that.

Mr. HENDERSON. It is not a small amount that is covered by this type of understanding.

Mr. STRAUSS. As I understand it, that understanding between Lehman Brothers and Goldman, Sachs was not one to which these 60 firms were a party.

Mr. HENDERSON. The evidence showed some of them were very painfully disturbed when there came that little dislocation between the companies.

Mr. STRAUSS. Perhaps because of the personal relationship, but I am assuming from hearsay that they were not parties to any understanding, any contracts between them.

Mr. NEHEMKIS. Mr. Commissioner, may I recall the witness' and perhaps your mind to the fact that Mr. Strauss' and Mr. Schiff's partner, Mr. Bovenizer, appeared here on the afternoon of the first day of our hearings on this subject. Mr. Bovenizer testified for

some time, I think we finished up that day around 6 o'clock, and the evidence indicated to me, at least—I don't speak for the committee, of course—that the Chicago Union Station account, which was a joint account between your firm for many years and Lee Higginson, was as frozen as any account that I know anything about.¹ I would even go so far as to say it was more frozen than A. T. & T.

Mr. STRAUSS. Perhaps I am foggy-minded. Are you talking about an account between underwriters being frozen or an account between the borrowers and underwriters being frozen?

Mr. NEHEMKIS. This business of language is tricky. I am using a word that I didn't coin. A great banker, Charles E. Mitchell, coined that word in the presence of this committee,² and by "frozen account," Mr. Mitchell, if I understood him correctly, meant the kind of account that over the years as the participations were allocated out by the leader or manager to the various members of the syndicate, remained fixed, crystallized, static.

Mr. STRAUSS. That is greatly at variance with the subject that I understood Mr. Henderson to first question me about, or you, sir, namely, as to whether there was a contract or a frozen relationship between the borrower and the banker. There are agreements between underwriters; I have come prepared to admit it.

Mr. NEHEMKIS. Do you know of any agreements between underwriters and issuers?

Mr. STRAUSS. Do I know of any?

Mr. NEHEMKIS. Yes.

Mr. STRAUSS. No; I can't say that I do.

Mr. NEHEMKIS. Well, I intend to offer, may it please the committee, Mr. Chairman, either tomorrow or the next day, at an appropriate place, some 30 agreements which have in the past existed between investment banking firms and corporations controlling over a long period of time the issuance of securities by those corporations.³

Mr. STRAUSS. I would like to just say this, that I have negotiated with many dozens of borrowers and numbers of them second, third, fourth, and other times. I have never executed or even discussed such a contract.

Mr. NEHEMKIS. But in the 'twenties wasn't that one of the most prevailing customs in the business?

Mr. STRAUSS. Not as far as we were concerned.

Mr. NEHEMKIS. Do you have any general knowledge on the subject?

Mr. STRAUSS. I am sorry, I don't know what other houses have done. I would assume it was rather unusual, but that is purely pulled out of the air.

Acting Chairman KING. I assume that a banking house or investment company that has a client, and that client is satisfied, has issues year in and year out, sort of a continual relation, that there are evidences of that character of relation where the investment banker has for long periods of time supplied the credit for a particular client and that particular client when he needed additional funds, by refunding, or new issues, would go to that investment house that had been caring for his business for many years.

Mr. STRAUSS. Yes, sir, Mr. Chairman; despite the objection to the parallelism of the professional relationship, it seems to me that

¹ Hearings, Part 22, pp. 11426 et seq.

² Ibid, pp. 11570, 11573 et seq.

³ "Exhibits Nos. 1879 to 1925."

the client at any rate has regarded it in much the same way as he has the relationship with his lawyer and his doctor, he has gone to the institution he trusted and that he had dealt with before and whose habits of fair play he is familiar with and in most instances those relationships have continued over a period of time.

Acting Chairman KING. Can you conceive of anything unethical or improper for an investment banking house to establish relations under the terms of which when its client wants additional money and resorts to the investment house, that that investment house should not, if it can reach a satisfactory agreement with him, continue to serve him?

Mr. STRAUSS. No, Mr. Chairman; I not only agree with that, but I go further, I think a continuing relationship of a mutually free will nature is really essential to a proper consideration of the problems of the borrower. It is only through long familiarity with the requirements of a business and coupled with familiarity with the market that the kind of service can be rendered that is of the most use to the borrower.

Acting Chairman KING. An investment house desires to know, does it not, before it takes on an obligation to sell securities or to underwrite them, something about the character of the business and the habits of those in charge, their dependability, their character and integrity, and also, further, if they have outstanding obligations and if so why, what disposition, what arrangements have been made to meet them?

Mr. STRAUSS. Yes, sir.

Acting Chairman KING. And all of those considerations are involved before the prudent banking investment house will undertake to dispose of the securities of a client.

Mr. STRAUSS. No investment banker could state it more succinctly.

Acting Chairman KING. What is that?

Mr. STRAUSS. I would accept that definition precisely.

Mr. NEHEMKIS. What was your previous remark?

Mr. STRAUSS. I said no one in this profession could state it more agreeably or succinctly.

Mr. NEHEMKIS. Than the Chairman has just put it?

Mr. STRAUSS. Yes.

Acting Chairman KING. Of course there is an element in those agreements where you underwrite that calls for perhaps great losses to be paid by the investment house if the securities are not sold or if there is a decline in the market, or if there is some interruption in the ordinary normal business.

Mr. STRAUSS. There are risks.

Acting Chairman KING. There are risks, so that not only is the relationship to which we have referred where client and lawyer are involved, but there is the additional question involved—namely, the risk, and the investment house assumes those risks, especially if they underwrite the securities.

Mr. STRAUSS. That is correct.

Mr. HENDERSON. Mr. Chairman, I want the record to be decidedly clear. I think, if you will recall the interrogation, I have not raised the question of propriety with the witness. What I am interested in is, what is it? Is it a profession, or is it a business, or is it a combination? It is at least slightly tinged with the public interest to know what this thing is that handles tremendous sums of the public's

money, and I think we are well served by this kind of discussion because if we get a clear picture, the public attitude is certainly on a good, strong, factual basis. I am not here raising the question of propriety: I am trying to find out just exactly what this thing is, and I have undertaken at various points to indicate where in my opinion it does not meet the tests of competition—free enterprise and free entry—which we presume exist in the public mind and which certainly are contemplated by the statute set down for the regulation of competition.

I think we are getting pretty well along in the testimony of the witness and the testimony of the committee.

Mr. NEHEMKIS. Senator King, last night in looking over my papers, I read a rather interesting bit of testimony by one of the former partners of the gentlemen who are here this morning. I think it bears directly on the point. I want to read to you, if I may, the testimony of the late Otto Kahn, who in 1933 testified on a similar subject but a few doors down the corridor.

Mr. Kahn was asked by Mr. Pecora the following questions.¹

What is the general method, or what has been the general method by which your firm has financed railroad operations?

Mr. KAHN. May I ask, in order that I may correctly understand your question before I answer: Do you mean the general method in detail of buying railroad securities, or the general method in approaching railroads?

Mr. Pecora replied,

Well, take the latter part of your inquiry, for instance, the general method of approaching railroads.

Mr. KAHN. Well, I should say precisely the same method by which a lawyer approaches clients.

Mr. Pecora replied,

Well, lawyers are not supposed to approach clients.

And then Mr. Kahn continued, and this is what I wanted to get at.

Mr. KAHN. I was coming to that, Mr. Pecora. Or the method by which a doctor approaches a patient who is sick. He does not go after him. Ethically and as a standard of the legal profession you are not permitted to go after him. And I do not suppose that a doctor would be permitted to go after a patient under the ethical standards of the medical profession. For instance, he could not go if someone told him that "Mr. Smith in the next block is very sick with pneumonia, you better run in and try to find out if can get him." That would not be the way to do it. He gets his clients by reason of his reputation for ability and for successful cures and for sound advice given. And so it is with the lawyer. So it is with the architect. And so in our case it has long been our policy and our effort to get our clients, not by chasing after them, not by praising our own wares, but by an attempt to establish a reputation which would make clients feel that if they have a problem of a financial nature, Dr. Kuhn, Loeb & Co. is a pretty good doctor to go to.

Mr. STRAUSS. I am awfully glad you read that. I wish I had that power of expression. I would like to put that in quotes.

THE ELEMENT OF PRICE IN INVESTMENT BANKING COMPETITION

Mr. O'CONNELL. Mr. Strauss, a few moments ago you explained, or I understood you to explain, the plane upon which you understand

¹ Reading from hearings before the Senate Committee on Banking and Currency, pursuant to S. Res. 84, 72d Cong. and S. Res. 56 and S. Res. 97, 73d Cong., Vol. 3, pp. 959-960, June 27, 1933.

competition operates in this industry. It is apparently a peculiar type of competition; that is, it doesn't reflect the element of price.

Mr. STRAUSS. Sometimes it does, sir.

Mr. O'CONNELL. But the element of price is a disturbing element, a risk element, is it not?

Mr. STRAUSS. No; there are certain securities, for example municipal securities, in which they are usually sold on price.

Mr. O'CONNELL. But they are sold that way because the law requires them to be sold that way. Would it not be fair to state that it is your position that price competition is undesirable in the field of investment banking?

Mr. STRAUSS. In the field of public investing; I think it is much more important to the investor than it is to the investment banker.

Mr. O'CONNELL. What is?

Mr. STRAUSS. That price competition should not exist.

Mr. O'CONNELL. Should not exist?

Mr. STRAUSS. Should not.

Mr. O'CONNELL. I am asking you if it is your position that price competition should not exist.

Mr. STRAUSS. That is my position.

Mr. O'CONNELL. What about in the field of public financing? Do you think it would be more desirable if competitive bidding for public securities were required by law?

Mr. STRAUSS. I would be glad to go into the general question of competition in public bidding if you wish me to do it. I would hate to do it just in answer to a question because it seems to me that the problem is one that has a good many angles and I don't want to get myself in the position where if I start to present a general theory you would feel that it is out of place.

Mr. HENDERSON. I think the witness is correct in that.

Mr. O'CONNELL. Yes.

Mr. STRAUSS. I have read that is not your desire, but I am prepared to do it if you wish.

Mr. O'CONNELL. That goes pretty far afield. The thing I want to be clear on is on whatever plane competition in the investment banking field operates it is your view that it should not include the element of price competition.

Mr. STRAUSS. That is my feeling, and of course it is obvious that sound performance is another element of competition as well as price.

Mr. O'CONNELL. Oh, yes; but it is equally obvious to me that price regulation is one of the most important functions of competition in competing enterprises.

Mr. STRAUSS. That is right.

Mr. O'CONNELL. It is a regulator of price.

Mr. STRAUSS. That is true.

Mr. O'CONNELL. It is one of the most important functions it has. As I understood it, it is one of the most important functions a system of competition has, and you feel that it is so inimical to the interests of the investment bankers and to the public that it should be eliminated entirely.

Mr. STRAUSS. Yes; and I am prepared to go into that at length if I am permitted to.

Mr. HENDERSON. I think at the proper time we would be glad to have that because we hoped to hear it, but for the purpose of this

discussion I think, as was developed, Mr. Chairman, that the element of price is a minor element, whereas in industry it is an extraordinary and prime element which determines whether or not competition actually exists.

Mr. NEHEMKIS. Mr. Strauss, you may recall that earlier I offered in evidence a memorandum¹ prepared by Mr. Schiff in which he had occasion to communicate that it would not be desirable for your firm to "poach on the preserves" of E. B. Smith & Co. without first establishing certain facts and conditions. I take it you agree with that general position.

Mr. STRAUSS. Yes. Of course, this was a memorandum for the use of Mr. Schiff's partners and in the use of a term I presume Mr. Schiff felt it was unnecessary to go into a disquisition in the memorandum of what he meant by a phrase or a sentence.

Mr. NEHEMKIS. You all understood each other.

Mr. STRAUSS. We understood it.

FINANCING OF THE ARMSTRONG CORK CO.—1935 ISSUE (RESUMED)—
EDWARD B. SMITH & CO. BELIEVES ARMSTRONG IS ITS ACCOUNT

Mr. NEHEMKIS. Is it not a fact, Mr. Strauss, that you had a number of conferences with Armstrong officials during the early part of the year 1935?

Mr. STRAUSS. Yes.

Mr. NEHEMKIS. And that is the year following the date of Mr. Schiff's memorandum?

Mr. STRAUSS. Precisely.

Mr. NEHEMKIS. Had you satisfied yourself before holding these conversations that the Armstrong people were coming to Kuhn, Loeb of their own free will, to use Mr. Schiff's phrase?

Mr. STRAUSS. I asked them that question when they came in. There was no other way of satisfying myself.

Mr. NEHEMKIS. What did they indicate?

Mr. STRAUSS. To the best of my recollection they satisfied any qualms I might have had on that point.

Mr. NEHEMKIS. But at that time you did not feel constrained to discuss the matter with E. B. Smith & Co.?

Mr. STRAUSS. I had nothing to discuss with E. B. Smith & Co.

Mr. NEHEMKIS. But you had a very potent caveat by Mr. Schiff in his memorandum of July of 1934 that to continue such discussions might be construed as poaching on the preserves of E. B. Smith & Co.?

Mr. STRAUSS. If those relationships which were referred to in that memorandum had not been ruptured. There was no way of ascertaining that.

Mr. NEHEMKIS. So that, if I understand correctly, you did ascertain that fact, namely, that the officials were coming of their own free will and you were satisfied on that point.

Mr. STRAUSS. I think the correspondence bears that out. They came to me after telegraphing me for an appointment.

¹ "Exhibit No. 1858."

Mr. NEHEMKIS. But you did not discuss the matter at that time with any of the partners of E. B. Smith & Co.?

Mr. STRAUSS. Very shortly thereafter I did.

Mr. NEHEMKIS. In fact, on March 14, 1935, did you not communicate with Mr. Swan and inform him that Kuhn, Loeb had this business and you would be very pleased if E. B. Smith & Co. would join hands with your firm in bringing out the financing?

Mr. STRAUSS. The precise language I used you wouldn't expect me to remember, but the general sense of what I said was undoubtedly just that.

Mr. NEHEMKIS. Now, Mr. Swan, will you be good enough to examine these diary entries which purport to be made by various partners of yours pertaining to Armstrong Cork events, and tell me whether this is a true and correct copy of the original diary in the possession and custody of your firm?

Mr. SWAN. It is.

Mr. NEHEMKIS. Mr. Swan, do you recall that on or about March 14, Mr. Strauss called you and said substantially what I have mentioned a moment ago, namely, that K. L. had the business and they would be very glad to join hands with you?

Mr. SWAN. I remember that.

Mr. NEHEMKIS. And do you recall, Mr. Swan, whether you explained at this time to Mr. Strauss that the Armstrong business was an old account of yours?

Mr. SWAN. I believe that we explained to Mr. Strauss that we individuals who had been in the Guaranty Co. had previously handled Armstrong business and that we considered that at that time that we were in contact with them in respect to business in the future, that our relations previously had been such that we expected that the Armstrong Cork Co. would continue with us as individuals.

Mr. NEHEMKIS. Mr. Strauss, do you recall such a conversation between yourself and Mr. Swan?

Mr. STRAUSS. In general terms, yes.

Mr. NEHEMKIS. Now, I read to you, Mr. Strauss and Mr. Swan, from a diary entry of March 19, 1935, by your partner, Mr. Swan, John Cutler [Reading from "Exhibit No. 1860"]:

Lewis Strauss of KL and JRS and myself—
that being Mr. Cutler—

3/14/35 that they had this business—
meaning K. L. had this business--
and he—

meaning Lewis Strauss—

asked if we would be interested in joining them. We explained that this was an old account of ours and we believed it was still ours, but it was kind of him to think of us and we would like to consider the situation. I subsequently talked to Roy Passmore at the Bank—

Will you be good enough to tell me who Roy Passmore is?

Mr. SWAN. He is vice president of Guaranty Trust Co.

Mr. NEHEMKIS. And the reference to the bank is the Guaranty Trust Co.?

Mr. SWAN. Yes.

Mr. NEHEMKIS. Continuing the diary entry [reading further from "Exhibit No. 1860"]:

who said that he had been in conversation with officers of the Company within the last thirty days and felt very sure that there was nothing in KL's contention, and that the Company would not do anything without discussing the matter with them at the Trust Co. first, and that he could not believe they would accept any other offer without giving us a chance—

"us" meaning E. B. Smith & Co.

I suggested it might be well for us to take a day and run down to Lancaster to see the plant, and he—

Roy Passmore—

thought this would do no harm.

Now following Mr. Strauss' call, Mr. Swan, did not one of your partners communicate with another official to discuss the same matter, do you remember?

Mr. SWAN. Another official of the bank?

Mr. NEHEMKIS. Of the bank.

Mr. SWAN. I don't happen to recall.

Mr. NEHEMKIS. Why was it necessary to consult an officer of the Guaranty Trust Co. in this matter, Mr. Swan?

Mr. SWAN. When the officers of the Guaranty Co. became partners, when certain officers of the Guaranty Co., became partners of E. B. Smith & Co., they did so with the hope we could get the concerns with which the Guaranty Co. had been doing business to continue to do their business with Edward B. Smith & Co. and with us as individuals. It was naturally a matter of the highest importance to us that we accomplish this. We were well and favorably known to all of the men in the Guaranty Trust Co., we had been working there for many years, we had had these contacts with these concerns as officers of the Guaranty Co. It was naturally of great importance that we get the officers of the Guaranty Trust Co. to recommend us to people whom we contacted and whom we wanted to continue to hold. If they wouldn't recommend us, of course it would have been very adverse to us. Naturally we expected that they would recommend us, because they knew how we did business, they knew how we had conducted business in the past, they knew that our new arrangement provided ample capital to take care of the needs of these customers, and therefore we kept in touch with the officers of the Guaranty Trust Co., who were particularly handling the accounts which might be under discussion in order to urge them and persuade them and push them on to helping us in every way we could get them to.

Mr. NEHEMKIS. And in that connection, Mr. Swan, was it not the practice and perhaps is it not the practice at the present time for members of your organization to frequently make use of the old records and books of account at the bank to check up on historical positions and percentage participation and advertising position and things of that sort?

Mr. SWAN. I would not say frequently, I would say occasionally.

Mr. NEHEMKIS. Occasionally.

Mr. Strauss, do you recall that on or about March 20, Mr. Swan communicated with you concerning your claims to the Armstrong business?

Mr. STRAUSS. I wouldn't recall the date, but if there is a diary entry perhaps that would refresh my memory. I keep no dairy.

Mr. NEHEMKIS. I beg your pardon?

Mr. STRAUSS. I keep no diaries.

Mr. NEHEMKIS. You mean as a partner of Kuhn, Loeb you keep no diary entries?

Mr. STRAUSS. No.

Mr. NEHEMKIS. Do you, by the way, Mr. Schiff?

Mr. SCHIFF. No, I don't.

Mr. NEHEMKIS. Do any of your partners keep diary entries?

Mr. SCHIFF. I wouldn't know. I shouldn't think so but I wouldn't know.

Mr. NEHEMKIS. Did not Mr. Swan state, Mr. Strauss, that he believed the Armstrong business was E. B. Smith's at this time?

Mr. STRAUSS. Yes.

Mr. NEHEMKIS. Did you recognize the validity of Mr. Swan's position and did you not agree that K. L. would not compete for the business?

Mr. STRAUSS. Yes. As a matter of fact, I have some recollection at that time of having reached the conclusion that we were not the only parties with whom the company had discussed the matter.

Mr. NEHEMKIS. Did you not also indicate to Mr. Swan that you so informed the Armstrong people?

Mr. STRAUSS. I don't remember whether I did or not.

Mr. NEHEMKIS. Let me read you from a diary entry of March 20, 1935, by Mr. Swan's partner, John W. Cutler [reading from "Exhibit No. 1860"]:

JRS—

meaning Mr. Swan—

and I—

meaning Mr. Cutler—

talked to Strauss of KL&Co. and told him that we believed Armstrong to be our business and that when something could be done they would look to us. Strauss said if that were so KL would not compete, and that he would so inform the Armstrong people. If they really wish to make a change and clear with us, KL will then be willing to talk to them. We indicated that if and when the business would be done we would have a place for them.

Mr. STRAUSS. That is what I should have said and probably did say.

Mr. NEHEMKIS. In other words, Mr. Strauss, after Mr. Swan informed you of the fact that Armstrong Cork Co. was, so to speak, his business, and that this was confirmed by the Guaranty Trust Co., K. L. recognized, did it not, that the Armstrong business was within the sphere of interest, so to speak, of E. B. Smith and there—

Mr. STRAUSS (interposing). No, emphatically not. In fact, he said it was his business, in fact he indicated that the Armstrong Cork Co. regarded him as its banker and that there was some sort of negotiation or conversation, at any rate, that was under way or in progress or had taken place. In any event it was not a clear field, although if you will again turn to this memorandum that I have just heard I reserved the right, in the event that that should not be the case, to freedom of action.

"SHOPPING AROUND"

Mr. NEHEMKIS. On or about April 3, 1935, Mr. Swan, did not Mr. Cutler and Mr. Land of your firm call on some of the company officials at Lancaster in pursuance of the suggestion of Mr. Passmore of the bank?

Mr. SWAN. I am not aware whether it was at his suggestion or their suggestion.

Mr. NEHEMKIS. Do you recall whether or not these gentlemen discussed with Mr. Suter, the vice president of the company, his previous visits to Kuhn, Loeb?

Mr. SWAN. I do not recollect that.

Mr. NEHEMKIS. You don't?

Mr. SWAN. I don't happen to remember.

Mr. NEHEMKIS. Do you recall whether or not Mr. Suter was accused by your partners of having committed the unpardonable sin, namely, of having "shopped around" on the Street?

Mr. SWAN. I do not remember that they accused him of that.

Mr. NEHEMKIS. Let me read you a rather interesting statement in a diary entry by J. N. L., and I think J. N. L. is J. N. Land?

Mr. SWAN. J. N. Land.

Mr. NEHEMKIS. This is a diary entry by Mr. Land as of April 6, 1935 [Reading from "Exhibit No. 1860":]

JWC—

being John W. Cutler—

and JNL—

just identified.

called on the co.'s officials in Lancaster 4/3/35. Discussed refunding with 4% debts. or pfd. See letter in Buying Dept. file dated 4/4/35 for outline of plans discussed.

Notice carefully, if you will, the next sentence [Reading further:]

Suter said Co. had not done any shopping around.

Now obviously (and I believe I am correct in making this inference) Mr. Suter upon meeting Mr. Land and Mr. Cutler at the railroad station at Lancaster didn't jump on their necks and say, "No, I didn't shop around." Somebody must have accused him of having shopped around so that he was forced to defend himself.

Mr. SWAN. I don't think that that inference is of necessity correct. I don't know how he happened to make the statement that he hadn't been shopping around, but I don't think it is fair from a memorandum to infer anything about what provoked that statement.

Mr. NEHEMKIS. Let us see if we can agree on this. Perhaps you are correct that that inference may not be fair, I don't know. Would you be willing to concede, however, that the problem of whether or not Suter had been shopping around was discussed in accordance with the diary entry from which I have just read?

Mr. SWAN. From the diary entry you have just read apparently the subject of shopping around was discussed.

Mr. NEHEMKIS. To put it in a way so we may all be clear on that phrase, what is meant by shopping around?

Mr. SWAN. Well, I think shopping around means, as I understand it, getting simultaneous offers from two or more banking firms.

Mr. NEHEMKIS. Now the members of your profession, Mr. Swan, and your profession, Mr. Strauss, and your profession, Mr. Schiff, don't think that that is a very good practice, do you?

Mr. SWAN. Are you asking me?

Mr. NEHEMKIS. Yes.

Mr. SWAN. I think I would like to go into this at just a little length, if I may. Of course, you must recognize that at this particular time the Guaranty Co. had ceased to exist. They had previously been bankers for the Armstrong Cork Co. Certain officers of the Guaranty Co. had gone into Edward B. Smith & Co. as partners. Those partners were making a great effort to secure the business of the Armstrong Cork Co., together with other pieces of business which they had previously handled. It is obvious from the record that at some stage of our effort to get this business, Mr. Suter was not clear as to just what he wanted to do and he did what I think I would have done in similar circumstances, he went around and discussed in a general way the affairs of the Armstrong Cork Co. with different banking houses, with us and with others. I think that he was trying to clear up in his own mind whom he wanted to select as his bankers and he went around and got a view of this situation by these various discussions. That I do not put in the category of shopping around. If I had been Mr. Suter I would have done just as he did.

Mr. NEHEMKIS. What is shopping around, as you understand it?

Mr. SWAN. Finally he came to the conclusion that he wanted to do business with Edward B. Smith & Co.. If after he had come to that conclusion he then continued to go to other bankers in order to get competitive offers to do his financing, that was what I would consider shopping around.

Mr. NEHEMKIS. And Mr. Strauss, as you previously indicated in your earlier testimony, you do not think that that is a very good practice to encourage?

Mr. STRAUSS. Well, it all depends on the circumstances, Mr. Nehemkis. If I had one security to sell and never expected to have another I would, to use the expression, shop around. If I expected, on the other hand, to do financing at some future time I would not.

Mr. HENDERSON. You say if you—

Mr. STRAUSS (interposing). I can only answer for myself.

Mr. HENDERSON. I know. If you were getting a piece of business—but how do you regard a company?

Mr. STRAUSS. If I were an executive in the unusual position of never having to sell but one issue, never again, so that continuing banking relationship or continuing financial advice was of no interest to me whatever, I should shop around.

Mr. NEHEMKIS. Mr. Schiff, suppose this situation occurred, would this be an instance of shopping around? The X corporation has had continuous banking relationships with a firm and comes to see you. You are aware of the circumstances, but in an unguarded moment you commit yourself on price and then that individual runs across the street and begins dickering around with another investment banking firm on the basis of the price he has received from you.

Mr. SCHIFF. I hope we wouldn't be that foolish as to let such an unguarded moment take us unawares.

Mr. NEHEMKIS. You will recall I said "assume."

Mr. SCHIFF. I don't think I can talk from assumptions like that.

Mr. NEHEMKIS. I thought I was giving you an instance that might lend itself to a "yes" or "no" answer. Suppose you tell me what your conception of shopping around is.

Mr. SCHIFF. I think shopping around is talking to several banking houses at the same time.

Mr. NEHEMKIS. With an idea of the issuer jacking up the price as a result of getting several bids?

Mr. SCHIFF. Perhaps jacking up the price, perhaps getting more liberal terms in the indenture, which would be of destructive nature to the security holder.

Mr. NEHEMKIS. Do you as an investment banker regard that as a desirable practice?

Mr. SCHIFF. I should think it would be most undesirable.

Mr. NEHEMKIS. Beg your pardon?

Mr. SCHIFF. I should think it would be most undesirable for the corporation issuing and for the public.

Mr. HENDERSON. May I ask a question there? In that case I think you must put it on different grounds. I think I see your grounds, it is weakening the indenture, but it strikes me as a contrast between, we might say, the marketing of securities through an investment banking house and the selling of securities on the Exchange, which are strikingly different. The Exchange is the outstanding example (I hope it will continue so) of a place where supply and demand exist, where buyer and seller exist, and where an attempt is made to have a large number of buyers and a large number of sellers trying to fix on a proper market price. The Exchange is always considered the real place where free competition exists and it strikes me that there is a decided analogy there. I think you have explained some of the reasons why you feel that it marks itself off.

Mr. SCHIFF. I might say that the Exchange is the market for trading in seasoned securities. We are talking about underwriting and offering new securities, after all.

Mr. HENDERSON. That would be the same thing for the secondary distribution or for marketing some treasury stock that has already come on the market.

Mr. SCHIFF. But then you are offering a big block. The exchange is dealing in small amounts. The offering of a large amount gives an entirely different reaction.

Mr. HENDERSON. Yes; but if you offered a big block, in other words if the supply side was very heavy and the buying side was less heavy, the market would determine the price.

Mr. SCHIFF. And that is one of the main functions of the investment banker, to determine what is the correct price for the existing market, to give the individual investor the opportunity to get it at the correct price and the issuer the opportunity to get the correct price for him, and if he doesn't price it right he won't stay in business very long, he will lose his business.

KUHN, LOEB & CO. INFORMS EDWARD B. SMITH & CO. OF CONVERSATIONS
WITH ARMSTRONG CORK CO.

Mr. NEHEMKIS. Mr. Swan, after your conversation with Mr. Strauss, when you informed him that you regarded the Armstrong

account as belonging to your firm and that you were ready to handle it, did not Mr. Strauss thereafter keep you informed of all conversations which he had with the Armstrong people?

Mr. SWAN. I believe that he may have had other conversations of which he probably informed us.

Mr. NEHEMKIS. Do you recall, Mr. Strauss?

Mr. STRAUSS. I don't recall, but if there were conversations subsequently there couldn't have been many.

Mr. NEHEMKIS. That wasn't quite my question. My question was, do you recall keeping Mr. Swan or his associates informed of each and every time you had occasion to discuss the matter with the Armstrong people?

Mr. STRAUSS. No, I don't recall that, but such things may have occurred.

Mr. NEHEMKIS. I am going to read to you from a diary entry by Mr. John W. Cutler, May 1, 1935. [Reading from "Exhibit No. 1860":]

Lewis Strauss called JRS, said Suter had been in to see him when he was in New York the end of last week and that he had told Suter of his conversation with us. Suter had also been to the Guaranty and talked with Passmore, who said that he felt sure if they were considering immediate action Suter would have spoken to him about it.

Mr. STRAUSS. May I interrupt to say I am very glad you read that, because it enables me to answer a previous question to which I had to reply I didn't know. You asked me, as I recollect, whether having advised Mr. Swan that I would inform the company of my conversation, I had in fact done so; I think that diary entry would indicate that I had done so.

Mr. NEHEMKIS. Now again on June 13, 1935, Mr. Cutler made this entry. [Reading further from "Exhibit No. 1860":]

Strauss said he had not seen him recently—

Referring to Suter—

and believed he had reported to us each and every time the Company had said anything to them.

Now, Mr. Swan, was not the reason for Mr. Strauss' reports to you the result of K. L.'s recognition that the Armstrong business was within your sphere of interest?

Mr. SWAN. Oh, I think when we had the conversation in which Mr. Strauss said he would not compete unless the Armstrong people broke from us, that he recognized that the business was in our hands.

Mr. NEHEMKIS. And that for K. L. to carry on discussions with the company under the circumstances would be a breach of banker's courtesy to you?

Mr. SWAN. I think that he did not, as far as I know—he can testify to this; I don't think he carried on conversations with the company after he had advised Mr. Suter that he could not carry on such conversations unless he broke with us.

Mr. NEHEMKIS. But you recall I just read into the record a diary entry as late as June 13, in which Mr. Strauss indicated that he was reporting to you each and every time the company had said anything to them.

Mr. SWAN. That may have referred to conversations far previous to that. I don't know—Mr. Strauss can testify as to whether or not

he had any conversations with Mr. Suter after he advised him that he would not compete unless he broke with us. I just don't know. I don't think he had any conversations after that.

Mr. STRAUSS. I don't know. If I had any visits from Mr. Suter and Mr. Prentis, they were completely unsolicited and I have no recollection of them. On the other hand, if the records indicate they came in to see me, I would immediately confirm them.

Mr. NEHEMKIS. I would like to offer in evidence the diary entries previously identified by the witness.

(The diary entries referred to were marked "Exhibit No. 1860" and are included in the appendix on p. 12779.)

Mr. NEHEMKIS. Is it your pleasure to recess at this time?

Acting Chairman WILLIAMS. How long will it be before you conclude with these witnesses?

Mr. NEHEMKIS. I should think Mr. Schiff and Mr. Strauss may be dismissed at this time. Mr. Swan unfortunately must continue this afternoon.

Mr. HENDERSON. I have a question before they go.

Acting Chairman WILLIAMS. Very well, proceed if it is just a question. I think it is time to recess, but if there is only a question or two, we will have it now.

Mr. HENDERSON. I wanted to make this clear before these witnesses leave. When we were having the free-for-all discussion Counsel Nehemkis used the term "ambulance chasing" to indicate the payment of fees by the legal fraternity to bring in clients. I think he meant to say that if banking were clearly and exclusively on complete fours with a profession, then that analogy would prevail. Certainly, I don't regard the function which a finder or an intermediary performs as that of ambulance chasing. I think he performs a very definite function, and it would serve the general philosophy of investment banking much better if we had more finders and if they would bring in a lot of business to add to new investment.

Mr. STRAUSS. I would like to say amen to that.

Acting Chairman WILLIAMS. The committee will be in recess until 2:30.

Mr. NEHEMKIS. Mr. Chairman, I take it Mr. Strauss and Mr. Schiff are excused, and Mr. Swan must remain.

Acting Chairman WILLIAMS. All right.

(Whereupon, at 12:35 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The committee resumed at 2:35 p. m. at the expiration of the recess.

Acting Chairman O'CONNELL. The committee will please be in order.

Mr. NEHEMKIS. Mr. Swan, will you be good enough to return to the witness stand, please?

(Representative Williams took the chair.)

TESTIMONY OF JOSEPH R. SWAN, SMITH, BARNEY & CO., NEW YORK, N. Y.—Resumed

Mr. NEHEMKIS. As you have already testified, Mr. Swan, on the subsequent public offering of the Armstrong Cork Co. issue, Kuhn,

Loeb was given a nonappearing position in the syndicate, is that not correct, sir?

Mr. SWAN. That is correct.

EDWARD B. SMITH & CO.'S RELATIONS WITH ISSUER CORPORATIONS AND
WITH GUARANTY TRUST CO.

Mr. NEHEMKIS. Mr. Swan, I show you a document bearing the title, "Outline of Guaranty Co. of New York's relationship to public financing of the American Rolling Mill Company." This document was obtained from your files. Will you be good enough to identify it for me?

Mr. SWAN. Are you going to question me about this?

Mr. NEHEMKIS. I do not intend to, sir.

Mr. SWAN. I think that is correct.

Mr. NEHEMKIS. Mr. Chairman, I ask that the document identified by the witness be spread on the records of the committee.

Acting Chairman WILLIAMS. It may be received.

(The document referred to was marked "Exhibit No. 1861" and is included in the appendix on p. 12781.)

Mr. NEHEMKIS. Mr. Swan, will you examine this document which purports to be a memorandum by your partner, Mr. Weisheit, with reference to the Dow Chemical Co.?

Mr. SWAN. I have never seen it, or I don't remember it, but I have no doubt that it is all right.

Mr. NEHEMKIS. This memorandum prepared by Mr. Weisheit for Mr. Cutler reads as follows [reading from Exhibit No. 1862-1"]:

Fred Kraye—

Will you tell me who Mr. Kraye is? Do you recall?

Mr. SWAN. Fred Kraye was formerly an employee of the Guaranty Co. I think he was later an employee of Edward B. Smith & Co. I think he is now an employee of Harriman Ripley & Co.

Mr. NEHEMKIS. Formerly Brown Harriman & Co.

Mr. SWAN. Formerly Brown Harriman.

Mr. NEHEMKIS [reading further from "Exhibit No. 1862-1"]:

Fred Kraye informed me today that he had been approached by Wertheim & Co. to form a joint account to buy rights to subscribe to this company's preferred stock with the idea of subscribing for the stock and marketing it. Recognizing us as the company's bankers, he had told Wertheim & Co. that Brown Harriman would do nothing without first talking to us and therefore wanted to know (1) whether we wanted to join Brown Harriman and Wertheim in such a joint account, (2) if we did not want to go along, did we have any objection to their approaching the large stockholders with the idea of making a bid for their rights.

Mr. SWAN. That is not the whole memorandum, is it?

Mr. NEHEMKIS. There is another part here. I am going to offer the entire memorandum in evidence. Would you like me to read it?

Mr. SWAN. I think it would be interesting just to have you read how we approached Mr. Dow, and so on.

Mr. NEHEMKIS [reading further from "Exhibit No. 1862-1"]:

Or (3) did we prefer that they take no action whatever.

The next paragraph—

After discussing the matter with JWC, CWK, and Hamilton Wilson, who discussed the whole story with Mr. Dow, I informed FK that Mr. Dow had told

us that he had received many letters from brokers who had common stock in their names—

and so on.

The rest of the memorandum is not relevant to the discussion.

Mr. SWAN. No; I just wanted it brought out.

Mr. NEHEMKIS. It will all be in evidence.

(The document referred to was marked "Exhibit No. 1862-1" and is included in the appendix on p. 12781.)

Mr. NEHEMKIS. Mr. Swan, I show you a memorandum prepared by C. L. Austin, formerly with your organization, dated July 23, 1935, which purports to come from your files. Will you identify it for me, please? Do you so identify it?

Mr. SWAN. I do.

(The memorandum referred to was marked "Exhibit No. 1862-2" and is included in the appendix, p. 12782.)

Mr. NEHEMKIS. I would like to read into the record, Mr. Chairman, paragraphs of the memorandum identified by the witness [reading from "Exhibit No. 1862-2"]:

JRS and CSC—

That is a new set of initials to me—

Mr. SWAN. Charles S. Cheston.

Mr. NEHEMKIS. Charles S. Cheston.

JRS and CSC called on Henry Dawes in Chicago on October 22, 1934, and discussed generally with him the possibilities of doing a refunding job when market conditions warranted. In view of the fact that Edward B. Smith & Co. had inherited the Guaranty Company's position, we stated to Mr. Dawes that we felt we should be given first consideration. Mr. Dawes said that it was too early to discuss the matter, but that he appreciated our stopping in and that he would let us know whenever he had anything to talk about.

Mr. SWAN. May I comment on that?

Mr. NEHEMKIS. Indeed, sir.

Mr. SWAN. It really is not a correct statement for us to say that we inherited the business. It has been testified here a number of times exactly what we did do, and we could not claim to have inherited the Guaranty Co.'s business. We as individuals had had relationships with these companies which we were trying to continue. I wouldn't want the Guaranty Trust Co. to think that I let this go by in this investigation and have you gentlemen understand that we thought we inherited their business.

Mr. NEHEMKIS. I think, Mr. Swan, that the committee understands that there was no will drawn up or formal instrument executed by which this business passed on and that the word "inherited" is used rather loosely but with some significance.

Mr. SWAN. Well, I think I would like to say something about that. There never was a more definite divorcement from an institution than there was in this case. The officers of the Guaranty Co. who became partners of E. B. Smith & Co. went into an organization with capital provided entirely by the partners. It is a fact that in the case of some partners who were not men who had been officers of the Guaranty Co. they did borrow some money to put in the partnership. It was done entirely on our own resources and all that we got from the Guaranty Trust Co. was friendly Godspeed and hoping that we would do well and that they thought we were properly set up

so they could recommend us to clients who might call on them for advice in regard to these matters.

Mr. NEHEMKIS. Mr. Chairman, may I have leave of the committee to offer in evidence two documents obtained from the files of the Mellon Securities Corporation of Pittsburgh? The member of my staff who obtained these documents is not available. Will you accept them subject to future identification?

(Mr. O'Connell in the Chair.)

Acting Chairman O'CONNELL. They may be accepted. Do I understand that a witness will identify them?

Mr. NEHEMKIS. A member of my staff who did obtain them will be here tomorrow morning, or certainly not later than Friday, to identify them.

Acting Chairman O'CONNELL. But you wish them inserted in the record?

Mr. NEHEMKIS. At this time so that the continuity will be clear.

Acting Chairman O'CONNELL. That may be done.

Mr. NEHEMKIS. I therefore offer in evidence two memoranda from the files of the Mellon Securities Corporation, one pertaining to the Koppers Co., \$25,000,000, series A, 4 percent first mortgage and collateral trust bonds due November 1, 1951, and the second memorandum pertaining to Jones & Laughlin Steel Corporation financing, dated Aug. 17, 1936, this memorandum being a memorandum by C. L. Austin.

Mr. HENDERSON. Do you have any objection to this insertion for later identification?

Mr. SWAN. I don't know what it is.

Mr. NEHEMKIS. They bear directly on the point we are now discussing, Mr. Swan.

Mr. HENDERSON. They have been secured in the same manner as all other documents.

Mr. NEHEMKIS. I would be very happy to allow Mr. Swan to read them.

Mr. SWAN. I am just a little in the dark.

Mr. NEHEMKIS. There is really a very simple point about which I wanted to make the record clear.

(Mr. Swan read the two memoranda referred to by Mr. Nehemkis.)

Mr. SWAN. I have no objection to their being offered.

(The memoranda referred to were marked "Exhibits No. 1863 and 1864" and are included in the appendix on pp. 12787 and 12788.)

Mr. NEHEMKIS. May I read to you from the Koppers memorandum by Mr. Austin. By the way, that is the same C. L. Austin formerly associated with E. B. Smith & Co. is it not?

Mr. SWAN. It is.

Mr. NEHEMKIS. [Reading from "Exhibit No. 1863":]

We stated clearly to Edward B. Smith & Co., and First Boston Corporation that we had no choice as to the selection of either house to appear second in the business: Smith on account of the indirect relationship through the Guaranty Company to the Koppers business.

By that Mr. Austin meant that the Guaranty Co. had had a participation in the Koppers business in the past?

Mr. SWAN. I expect that is so.

Mr. NEHEMKIS. May I now read to you from Mr. Austin's memorandum in regard to Jones & Laughlin Steel Corporation financing,

as of Aug. 17, 1936. In his second paragraph, which you glanced at a moment ago, he said as follows [Reading from "Exhibit No. 1864"]:

We then approached Messrs. Swan and Walker of Edward B. Smith & Co., who were formerly connected with the Guaranty Company of New York, which had second position to the Union Trust Company of Pittsburgh in the previous preferred stock issue of Jones & Laughlin.

I merely offer these and discuss them at this time, Mr. Swan, not because they have any special significance other than this—it is the only way one can make judgments about these matters—that representatives of the industry regarded E. B. Smith & Co. as the successor to the Guaranty Co. Maybe they were all wrong, but there has been a fairly voluminous amount of evidence that has gone in on that point.

Mr. SWAN. If I may comment on that, when we were turned out into the world from the Guaranty Co. we made, as I have said many times before, every effort we could to continue our relation with the business that the Guaranty Co. had done, and we didn't hesitate to stress very strongly our personal relationships which we had built up in the Guaranty Co. with whatever business was under discussion, and we tried to make our long personal relationship with this or that business count in our efforts to secure a favorable position in this or that respect. There is no question but that is what we endeavored to do.

FINANCING OF WILSON & COMPANY—1935 ISSUE

Mr. NEHEMKIS. Mr. Swan, has E. B. Smith & Co. done any financing for Wilson & Co.?

Mr. SWAN. Yes; we did, I think, two pieces of business.

Mr. NEHEMKIS. In 1935, in July of 1935, to be specific, did not E. B. Smith & Co. bring out a \$20,000,000 first mortgage 20-year bond series A offering?

Mr. SWAN. I accept your date.

Mr. NEHEMKIS. And did not E. B. Smith & Co. head this issue?

Mr. SWAN. We did, jointly with Glore, Forgan.

Mr. NEHEMKIS. Do you recall who composed the syndicate?

Mr. SWAN. Well, there were quite a number in the group.

Mr. NEHEMKIS. I show you a memorandum bearing on this subject entitled "For Record Only," dated July 30, 1935, and ask you to examine page 2 and see whether it does not refresh your recollection.

Mr. SWAN. That is a correct statement of the group, I am sure.

Mr. NEHEMKIS. Can you tell me who some of the members of the group were?

Mr. SWAN. Edward B. Smith & Co., Field, Glore & Co., Speyer & Co., The First Boston Corporation, Hallgarten & Co., Goldman, Sachs & Co., Bancamerica-Blair Corporation, Lazard Frères & Co., Hornblower & Weeks, Lee Higginson Corporation, Kuhn, Loeb & Co.

Mr. NEHEMKIS. Was Kuhn, Loeb in a nonappearing position?

Mr. SWAN. They were in a nonappearing position.

Mr. NEHEMKIS. What was the amount of Kuhn, Loeb's participation?

Mr. SWAN. \$2,000,000.

Mr. NEHEMKIS. Was that one of the largest of the participations?

Mr. SWAN. That was the third largest.

Mr. NEHEMKIS. Was not the Wilson & Co. account an old account of the Guaranty Co., Mr. Swan?

Mr. SWAN. It was a joint account between Guaranty Co., Chase Securities Co., Blair & Co., and Hallgarten & Co.

Mr. NEHEMKIS. Do you recall when the Guaranty Co. had handled the last piece of financing for the company immediately prior to the passage of the Banking Act?

Mr. SWAN. I don't happen to recall it.

Mr. NEHEMKIS. If I told you it was in 1931, would that help any?

Mr. SWAN. If you have got some memorandum that I could identify, it would help. I don't happen to recollect.

Mr. NEHEMKIS. I show you a memorandum by Mr. C. L. Austin, dated October 18, 1934, bearing on Wilson & Co., Inc. Will you glance at this and see whether this refreshes your recollection?

Mr. SWAN. May I read this?

Mr. NEHEMKIS. Please.

Mr. SWAN [reading from "Exhibit No. 1835"]:

The Guaranty Company informs me that the Purchase Group in the last Wilson financing, which was in June 1927—

That is dated 1934, this memorandum, so the last financing was 6 years before.

Mr. NEHEMKIS. I think in 1931 there was a note offering. I may be mistaken—I accept that, it is unimportant.

Now can you tell me who composed the purchase group in that 1927 offering?

Mr. SWAN. Guaranty Co., Hallgarten, Blair, Chase Securities, Continental & Commercial Trust Savings Bank; First Trust & Savings, Illinois Merchants Trust.

Mr. NEHEMKIS. Would you be good enough to read once again the first sentence of the first paragraph?

Mr. SWAN [reading from "Exhibit No. 1865"]:

The Guaranty Company informs me.

Mr. NEHEMKIS. We had occasion this morning to refer to the occasional practice, shall I say, of members of your organization to refer to the records or books of the Guaranty Co. for information on old Guaranty business, did we not?

Mr. SWAN. We did, yes.

Mr. NEHEMKIS. And this would apparently be one of those occasions, would it not?

Mr. SWAN. We asked the Guaranty Trust Co. to search the records of the Guaranty Co. and see if they could give us this information. We did not have access to the records.

Mr. NEHEMKIS. Isn't that a rather valuable right, Mr. Swan, to be able to have access to the material on file with the Guaranty Trust about past accounts of that bank?

Mr. SWAN. It is useful. I wouldn't say it was very valuable.

Mr. NEHEMKIS. I just had in mind the fact that when The First Boston Corporation was organized, it thought that similar rights were sufficiently valuable that it was willing to pay for them.

Mr. SWAN. They got the records.

Mr. NEHEMKIS. Exactly, because they thought they were that important.

Mr. SWAN. We haven't got the records.

Mr. NEHEMKIS. But you have free entry and access.

Mr. SWAN. No, we have not. By special request, when they think our request is a reasonable and proper one, they will give us the information we ask for.

Mr. NEHEMKIS. And this account we have been referring to was jointly handled, you say, with Hallgarten & Co.?

Mr. SWAN. With Chase Securities, Blair, and Hallgarten.

Mr. NEHEMKIS. Now while you have the sheet before you, Mr. Swan, will you indicate which banking houses of the original members of this purchase group are no longer in business?

Mr. SWAN. The Guaranty Co. is no longer in business. Blair & Co. combined in some manner with the Bank of America, so that there is now an organization known as the Bancamerica-Blair—I don't know what that arrangement consisted of. Chase Securities Co. is now a part of The First Boston Corporation.

Mr. NEHEMKIS. Are there any others on that list no longer in the investment banking business?

Mr. SWAN. The Continental & Commercial, First Trust, and Illinois Merchants are of course excluded from the investment banking business.

Mr. NEHEMKIS. Mr. Chairman, I ask that this document dated October 18, 1934, and previously identified by the witness, be admitted in evidence.

(The memorandum referred to was marked "Exhibit No. 1865" and is included in the appendix on p. 12789.)

Would it be correct for me to say, reconstructing the condition at this time in 1935, that any new financing by the Wilson & Co. was regarded as an open field, so to speak?

Mr. SWAN. Well, I think Wilson—of course, any banking business of any corporation is an open field so far as the corporation is concerned. I don't think that Edward B. Smith & Co. was regarded as having any preemptive rights to Wilson & Co. financing.

Mr. NEHEMKIS. As a matter of fact, a number of other investment banking houses, as the evidence will subsequently show, were likewise very interested in getting that business, weren't they?

Mr. SWAN. That is true.

Mr. NEHEMKIS. White, Weld & Co., for example.

Mr. SWAN. That is true.

Mr. NEHEMKIS. Field, Glere?

Mr. SWAN. That is true.

Mr. NEHEMKIS. Kuhn, Loeb?

Mr. SWAN. Yes, Kuhn, Loeb & Co. Mr. Walker of Kuhn, Loeb & Co. of course had been connected with Blair & Co., who were in the business previously.

EDWARD B. SMITH & CO. DISCUSSES WILSON & CO. FINANCING WITH E. A. POTTER, VICE PRESIDENT OF GUARANTY TRUST CO. AND DIRECTOR OF WILSON & CO.

Mr. NEHEMKIS. Now preceding the actual signing of the purchase contract with Wilson & Co. for the offering of the securities, did you

or any of the members of your organization discuss the prospective financing with any of the officials of the Guaranty Trust Co.?

Mr. SWAN. We discussed the prospective financing and other matters in connection with Wilson probably quite a number of times with Mr. E. A. Potter who was a vice president of the Guaranty Trust Co.

Mr. NEHEMKIS. I show you a memorandum dated September 10, 1934, addressed to you, by Mr. C. L. Austin. Will you examine this and tell me whether you recognize it to be a true and correct copy of an original in your possession and custody?

Mr. SWAN. I identify that.

Mr. NEHEMKIS. The document identified by the witness, Mr. Chairman, is offered in evidence.

Acting Chairman O'Connell. It may be admitted.

(The memorandum referred to was marked: "Exhibit No. 1866-1" and is included in the appendix on p. 12790.)

Mr. NEHEMKIS. Will you be good enough, Mr. Swan, to explain the purpose in seeing Mr. E. A. Potter, of the Guaranty Trust Co., on this matter?

Mr. SWAN. Mr. E. A. Potter was a director of Wilson & Co., and a vice president of Guaranty Trust Co. in charge of the Wilson & Co. account. Once again, we were pressing as hard as we could to try to get business, and going to anybody that we could think of who might help us.

Mr. NEHEMKIS. You had a great number of conversations with Mr. Potter—

Mr. SWAN (interposing). Members of the organization had a number of conversations with him.

Mr. NEHEMKIS. As a matter of fact, according to the diary entries which your firm has been good enough to make available to us, I find in checking those entries that altogether there were 21 conversations with Mr. Potter about this particular matter, and possibly others, but certainly about this one matter.

Would it be correct for me to say that, as a matter of fact, Mr. E. A. Potter, Jr., was your chief conduit to the company?

Mr. SWAN. The Wilson & Co. matter goes back a long way. I myself, personally was a member of either the reorganization committee of Wilson & Co. or of the bondholders' protective committee, back I think in 1926, or thereabouts. Mr. Thomas E. Wilson was at one time a director of the Guaranty Trust Co. I knew him pretty well. Mr. Buethe, the treasurer of the company, was an old friend of mine from this previous contact with this reorganization. Mr. E. A. Potter was helpful to us in the matter because he knew us and knew our capability of doing business, but I think I can say that I had rather close personal relations with Wilson & Co. for 15 years.

Mr. NEHEMKIS. Will you examine a memorandum I am about to show you from Mr. Safro, then of your statistical department, addressed to Mr. Karl Weisheit, dated September 5, 1934, and tell me whether you recognize this to be a true and correct copy of an original in your possession?

Mr. SWAN. I so identify it.

(The memorandum referred to was marked "Exhibit No. 1866-2" and is included in the appendix on p. 12790.)

MR. NEHEMKIS. On the date specified, to wit, September 5, 1934, Mr. Safro wrote as follows to your partner, Mr. Weisheit. [Reading from "Exhibit No. 1866-2"]:

He urged—

Referring to another person—

that we use our influence upon those in touch with the situation (he meant E. A. Potter, Jr.).

MR. SWAN. I am just wondering what the significance of that is. I don't know that we had any influence with Mr. E. A. Potter, or whether we carried out what this memorandum requested us to do. I know of no conversation with Mr. Potter about that particular point.

WHITE, WELD & CO.'S INTEREST IN WILSON & CO.'S FINANCING

MR. NEHEMKIS. About the same time, I think, as you testified earlier, White, Weld & Co. was also interested in obtaining this business. Is that correct, sir?

MR. SWAN. Yes.

MR. NEHEMKIS. Is it not a fact that Mr. Ben Clark, of White, Weld, saw you on or about March 4 and advised you of their interest in the business?

MR. SWAN. They certainly advised us of their interest in the business at some time.

MR. NEHEMKIS. Do you recall at this time the reasons for Mr. Clark feeling it necessary to discuss the matter with you at all?

MR. SWAN. My recollection is that Mr. Clark was approached by the gentleman about whom there was a great deal of conversation this morning.

MR. NEHEMKIS. Do you recall his name? Mr. M. L. Freeman?

MR. SWAN. Mr. M. L. Freeman. Mr. M. L. Freeman indicated to him that he could secure the business of Wilson & Co. for White, Weld & Co.

MR. NEHEMKIS. I am not sure you have quite answered my question. May I just repeat it to you substantially as I gave it to you a moment ago? Do you recall the reasons that prompted Ben Clark in manifesting his interest in the business to you? Why was it necessary for him to discuss it with you at all? As I understand the situation—

MR. SWAN (interposing). I can reconstruct in my mind perhaps why he talked to me. Of course, he could tell you better himself than I could as to why he came to me at all, but my interpretation of it is that he had been approached by Mr. M. L. Freeman; that he knew of my past connection with Wilson & Co.; that he doubted very much Mr. Freeman's ability to secure the business for him; and that he came over to us, hoping that by approaching us as he did, that if we did the business he could get a position there.

MR. NEHEMKIS. Did you know that White, Weld had entered into a contract with Mr. M. L. Freeman, agreeing to pay him a finder's fee for that business?

MR. SWAN. I did not.

MR. NEHEMKIS. Never heard of that at all until this moment?

MR. SWAN. Never heard of it.

Mr. NEHEMKIS. Would that mean now that you know that information, that they had the business when they went to that extent?

Mr. SWAN. Well, they might have entered into a contract based on his delivering the business, but I don't believe they thought they had the business. I know as far as I was concerned I thought they didn't have a chance of getting the business.

Mr. NEHEMKIS. Would it be a fair interpretation for me to say the following, Mr. Swan: That White, Weld felt they had some claim, possibilities of getting this business, but recognizing the old Guaranty position in this account and your relations and some of your associates' relations to the financing, they felt that as a matter of bankers' courtesy, before going ahead too far perhaps they ought to discuss it with you.

Mr. SWAN. Well, of course it is difficult for us to say what their thoughts were.

Mr. NEHEMKIS. Perhaps this will help me out. Mr. Whitehead, will you take the stand, please?

Mr. Whitehead has been sworn. Mr. Whitehead, did you not obtain this letter that I now show you from the files of White, Weld & Co.?

Mr. WHITEHEAD (Securities and Exchange Commission.) Yes, I did.

Mr. NEHEMKIS. Was that letter given to you by a partner of that firm in response to your request?

Mr. WHITEHEAD. That is correct.

Mr. NEHEMKIS. I ask that this letter be received in evidence.

Acting Chairman O'CONNELL. It may be received.

(The letter referred to was marked "Exhibit No. 1867" and is included in the appendix on p. 12791.)

Mr. NEHEMKIS. This is a letter dated July 8, 1935, addressed to John W. Cutler, of your organization, signed by Faris R. Russell, partner of White, Weld & Co.¹ [reading from "Exhibit No. 1867"]:

You and Burnett Walker for your firm and Ben Clark and I for White, Weld & Co. have had several conversations during the course of the last several months with respect to refunding operations for Wilson & Co., Inc. Inasmuch as the understandings had between us, were primarily between yourself and myself, I am sending this letter to you with a chronological history taken from our files on this matter. The history is as follows:

On February 26, 1935 an entrepreneur by the name of M. L. Freeman discussed with us the question of refunding the outstanding bond issue.

Mr. HENDERSON. What did they call M. L. Freeman this time?

Mr. NEHEMKIS. They called him an entrepreneur. I would hesitate to say whether that is the same thing as a finder or middleman; maybe I had better use just the name which is here.

Mr. HENDERSON. I think he is an entrepreneur; that is my economic opinion on it.

Mr. NEHEMKIS. Is it all right for me to refer to him as entrepreneur? [Reading further from "Exhibit No. 1867"]:

On February 26, 1935 an entrepreneur by the name of M. L. Freeman discussed with us the question of refunding the outstanding bond issue.

During the same week—

Will you note this, Mr. Swan?

Mr. Freeman demonstrated that he was not merely presenting an idea which is, of course, open field for all free lance promoters but introduced in our

¹ In this connection see also *infra*, p. 12533 et seq.

office J. D. Cooney, Vice President of Wilson & Co., Inc., and the whole discussion was with respect to the matter of refunding their outstanding bonds.

Had you known that?

Mr. SWAN. I knew that.

Mr. NEHEMKIS. [Reading further from "Exhibit No. 1867"]:

After such discussion, Mr. Cooney said that they would in the next few weeks decide on their program and said he would again discuss with us the question of what sort of a trade we might be able to work out.

We subsequently confirmed with Mr. Halstead Freeman—

This is another Freeman, and this Freeman is now a partner in Glore, Forgan & Co. Is that correct?

Mr. SWAN. That is correct.

Mr. NEHEMKIS. And just for the sake of correct identification, at this time, '35, this Halstead Freeman was a financial adviser to Wilson & Co.

Mr. SWAN. That is correct.

Mr. NEHEMKIS. And not yet a partner of Glore, Forgan.

Mr. SWAN. That is correct.

Mr. NEHEMKIS. [Reading further from "Exhibit No. 1867"]:

We subsequently confirmed with Mr. Halstead Freeman that there was an open field for the business.

We recognized also that of the original houses in the major position on this business, all but one had discontinued activities.

Recognizing, however, that some of the partners of your firm had previously been officers of the Guaranty Co., which had discontinued its business, and not knowing whether you were active in considering this business, we decided to discuss it with you and, if you wished us to do so, join hands with you in its development.

On March 6 Ben Clark saw Joe Swan and advised him of the above and Mr. Clark's report on the meeting states that "Joe was frank to say that they had no discussion so far." Further that Joe said "I do not want to tie you up in any way and I will look into it with the idea that we are two friends and you will hear from me when I get posted."

On March 11 you telephoned to me about this matter, stating that you understood Freeman had been in to see us saying that he had authority to represent the company. You stated that this had been checked with the company and it had been found that Freeman was not authorized to negotiate and you further stated that on account of your close friendship with the Guaranty Trust Co. you had as good a position as anyone to negotiate with Wilson & Co. and it was your thought that we should tell Mr. Freeman we were not in a position to deal with him and that your firm would follow the matter with the company and come back to us as matters developed.

On March 18th you telephoned me saying that the old account at the Guaranty was joint with Hallgarten & Co., that you had talked with Hallgarten & Co., whose Chicago partner is a director of the company, and had arranged that we were to be included in the business. You said further that you hoped it would be agreeable to us to let the matter of our percentage rest for the present as you intended to work out a fair and reasonable place for us. I told you this was satisfactory and left the matter in your hands.

I asked you whether there was any indication of serious competition from other directions and you stated that you did not see how with the friendship of E. A. Potter and Emerich there could be much doubt as to your getting the business. We consequently folded our hands to await developments.

Mr. SWAN. May I remark on that?

Mr. NEHEMKIS. After I get a few other things into the record, then you will be free to comment. Mr. Whitehead, will you take the stand once again? I show you 10 documents from the files of White, Weld & Co. Would you be good enough to tell me whether these were obtained by you from the files of White, Weld & Co.?

Mr. WHITEHEAD. These were obtained from those files.

Mr. NEHEMKIS. The documents identified by Mr. Whitehead are offered in evidence, may it please the committee.

Acting Chairman O'CONNELL. They may be admitted.

(The documents referred to were marked "Exhibits Nos. 1868 to 1876-2" and are included in the appendix on pp. 12792-12796.)

Mr. SWAN. In spite of everything said in that letter I would like to reiterate it was my opinion at that time White, Weld & Co. had not the slightest chance of getting that business. That perhaps was borne out later, and adds substance to what I say, by the fact that we tried to get them in the business and that the company did not in the end want them in the business when the syndicate was being formed.

Mr. NEHEMKIS. I was going to go into that with you, Mr. Swan, and if you wish we will discuss that.

Mr. SWAN. Because there are, of course, statements in that letter that certainly overstate any position we might have had at that time, that we had the business in our pocket—we thought we had a very good chance of getting it, and we were very confident they would not get it.

Mr. HENDERSON. Mr. Swan, you have been at some length saying you didn't get it here, taking it from Guaranty, but when you come to dealing with White, Weld in this case your officers practically said, "Don't poach on this preserve," didn't they?

Mr. SWAN. No; I don't think so. I think in this case—

Mr. HENDERSON (interposing). May I have the letter just a moment? [Reading from "Exhibit No. 1867"]:

On account of your close friendship with Guaranty Trust Co. you had as good a position as anyone to negotiate with Wilson & Co. and it was your thought that we should tell Mr. Freeman we were not in a position to deal with him and that your firm would follow the matter with the company and come back to us as matters developed.

Mr. SWAN. It means to me, repeating what I said before, I didn't think they had a chance of getting the business. Here was an account that had been upset a good deal by dissolution of various affiliates, put out of business of the banks. There was room in this business for others. White, Weld were good friends of ours and at the particular time we were rather anxious to do some business with them. We thought that they would add to the account and we were glad to have them in the account. Of course, any discussions we have of that kind with anybody prior to the formation of a syndicate always presuppose it is subject to the company's approval, which had to be obtained in this case, and in the particular case, could not be obtained. We pressed pretty hard on the fact that we had personal relation with this company and other companies, and that we were getting after business pretty hard and hoped and expected to get it.

Mr. HENDERSON. And if you could scare somebody off the preserve by saying, "We know the Guaranty Co.," you didn't—

Mr. SWAN (interposing). That is an inference, of course, that might be made or you wouldn't have made it, but I would just like to say that certainly in this particular case which we are now discussing there is no validity in that inference.

Mr. HENDERSON. White, Weld certainly thought it had some validity in this?

Mr. SWAN. White, Weld was trying mighty hard to get a piece of the business and they were trying to get it then.

Mr. HENDERSON. And in writing this letter—

Mr. SWAN (interposing). This was all after the fact they didn't get the business, and they were very much upset about it and they wrote us this letter.

Mr. NEHEMKIS. You see this occurs after the financing, Mr. Commissioner, and I want to take it up again at a later time.

Acting Chairman O'CONNELL. Well, Mr. Swan, in cases similar to this one, as former representative of the Guaranty Co., and having the contacts you had with these former issuing companies, you had no hesitancy in confidently asserting a claim to that business, did you? I am not saying a legal claim.

Mr. SWAN. I think I had a great deal of hesitation until the company designated us as their bankers. We didn't know whether these companies who had formerly done business with the Guaranty Co. were going to do business with us. We asserted to the best of our ability our personal relationship with the companies in the past; no question about that.

Acting Chairman O'CONNELL. You asserted that by virtue of your former experience with the companies you hoped to do that business and that other people should—

Mr. SWAN (interposing). We hoped to get the business and we went to the companies; we said to them, "Because of our personal relationships with you in the past we hope you will give us the business."

Acting Chairman O'CONNELL. Wouldn't you also think it proper to say to another investment banking house, "Keep your hands off this business"?

Mr. SWAN. I don't think we did this, and I think this letter would rather indicate—it says [reading from "Exhibit No. 1867"]:

Joe was frank to say that they had no discussion so far. Further that Joe said "I do not want to tie you up in any way."

Acting Chairman O'CONNELL. Could you have tied them up in any way?

Mr. SWAN. No, I don't believe so, unless they wanted to be tied up. I couldn't have tied them up in any way.

CONVERSATIONS WITH E. A. POTTER—Resumed

Mr. NEHEMKIS. Mr. Swan, will you examine what purports to be a series of diary entries made by various partners of your firm and tell me whether you recognize that sheet as a true and correct copy?

Mr. SWAN. I do, yes.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence. It is that document, Mr. Chairman, to which I referred earlier as showing twenty-one various conversations with people at the Guaranty Trust Co. concerning this piece of financing.

Acting Chairman O'CONNELL. It will be admitted.

(The document referred to was marked "Exhibit No. 1877" and appears in the appendix on p. 12796.)

Mr. NEHEMKIS. Didn't Mr. E. A. Potter suggest that you write personally to Mr. Wilson about this matter, Mr. Swan?

Mr. SWAN. I believe he did.

Mr. NEHEMKIS. And following his suggestion and your discussion with him is not this a copy of the letter you wrote to Mr. Wilson?

Mr. SWAN. That is correct.

Mr. NEHEMKIS. And this letter dated March 13, 1935, by yourself to Mr. Wilson reads as follows [reading from "Exhibit No. 1878"]:

During the past few months various of my partners and I have had conversations with Mr. E. A. Potter, Jr., with respect to the possibility of a refunding operation in connection with your outstanding 6% Bonds.

The letter is offered in evidence, Mr. Chairman.

Acting Chairman O'CONNELL. It will be received.

(The letter referred to was marked "Exhibit No. 1878" and is included in the appendix on p. 12799.)

Mr. NEHEMKIS. And I show you now a memorandum by Mr. Cutler dated March 8, 1935. Will you examine this and tell me whether that is a true and correct copy of an original in your possession?

Mr. SWAN. It is.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence, Mr. Chairman.

Acting Chairman O'CONNELL. It will be admitted.

(The letter referred to was marked "Exhibit No. 1879" and is included in the appendix on p. 12799.)

Mr. NEHEMKIS. Now at the time of these conversations with Mr. Potter did I not understand you to testify earlier that Mr. Potter was a director of Wilson & Co.?

Mr. SWAN. I did.

Mr. NEHEMKIS. Was Mr. Potter by chance authorized by Wilson & Co. to discuss financing plans and programs with investment banking houses? Do you recall?

Mr. SWAN. Not as far as I know.

Mr. NEHEMKIS. Is it customary for directors of corporations to hold informal discussions of this character with various banking houses concerning future plans and programs?

Mr. SWAN. I think it is quite customary for investment banking houses to go to directors or officers of banks to discuss with them the possibility of business with a company in which they are directors. Of course, as far as Mr. Potter was concerned, we discussed no plan or program with him and he, as the memoranda and letters show, was on the telephone with Mr. Wilson informing Mr. Wilson that we had talked to him about this or that, and when I wrote the letter I referred to the fact that I had talked to Mr. Potter. There was a very close relationship between Mr. Potter and Mr. Wilson. Mr. Wilson was, as I testified—had been director of the Guaranty Trust Co. and he had a very high regard for the Guaranty Trust Co. and leaned on them a good deal for advice.

Mr. NEHEMKIS. Now on March 12, 1935, Mr. John W. Cutler had occasion to make the following diary entry [reading from "Exhibit No. 1877"]:

Talked again with Potter on telephone, who called me. Explained that the Guaranty had handled previous financing for Company, and had associates in those former deals, some of whom would have to be taken care of.

Now was not Mr. Potter's communication tantamount to dictating who the members of the new syndicate were to be? In other words, did this not mean that the old banking group and their successors would have to be taken care of in the new financing?

Mr. SWAN. I have examined that memorandum and I am at a loss to understand it, except by substituting the name of Russell, who called me. It makes sense that way, and doesn't make sense any other way.

Mr. NEHEMKIS. I thought it made sense, leaving the name Potter in, but, of course, I may be mistaken about that. I accept your explanation.

Acting Chairman O'CONNELL. Who is Russell?

Mr. NEHEMKIS. Faris Russell of White, Weld & Co. Potter is the gentleman to whom reference has previously been made, namely, E. A. Potter, Jr., vice president of the Guaranty Trust Co.; the witness has just indicated that it may be it should have read Russell. I indicated, although I accept the witness's explanation, that it might make awfully good sense leaving Potter in.

Acting Chairman O'CONNELL. In the second sentence which starts with the words [reading further from "Exhibit No. 1877"]:

Explained that the Guaranty had handled—

Does that mean that Mr. Cutler explained or that Mr. Russell or Potter, as the case may be, explained? Have you that memorandum in front of you? Reading the word Russell in the first sentence, who explained in the second sentence?

Mr. SWAN. "Talked again with Potter." I would like to read this, substituting Russell.

Talked again with (Russell) on telephone, who called me. Explained that the Guaranty had handled previous financing for company.

Now we wouldn't have to explain that to E. A. Potter.

Acting Chairman O'CONNELL. Who would have explained that?

Mr. SWAN. J. W. Cutler who talked to Russell or Potter. J. W. Cutler would not have to explain to Potter that we did the last financing for the company. [Reading from "Exhibit No. 1877"]:

Explained that the Guaranty had handled previous financing for the Company and had associates in those former deals—

Which of course Potter had known for years.

Some of whom would have to be taken care of.

Mr. NEHEMKIS. May I interrupt just for a moment, Mr. Swan? May I have the same privilege of doing the same thing and leaving it as it is?

Talked again with Potter on the telephone, who called me.

Now I insert a word. [Reading from "Exhibit No. 1877"]:

(Potter) explained that the Guaranty had handled previous financing for the company and has associates in those former deals, some of whom would have to be taken care of.

Mind you, Mr. Chairman, I do not doubt the witness's statement, but I present for the evaluation of the committee that reasonable men could take either interpretation.

Acting Chairman O'CONNELL. We are trying to interpret that, but I was merely asking Mr. Swan whether in the second sentence now, that we speak of, explained, he understood that it was Mr. Cutler that did the explaining, or whether it was the man on the other end of the telephone.

Mr. SWAN. May I ask you to read the last sentence? [Reading from "Exhibit No. 1877"]:

Russell said he understood and would leave it to us to take care of his firm in the proper way.

Now, why do we switch from Potter to Russell? The only person that has been mentioned previously is Potter. The only way to me that this memorandum can be understood at all is to substitute Russell for Potter in the first line.

Mr. NEHEMKIS. I will be frank to say that it puzzled me and I thought that it possibly meant that after this telephone conversation by Potter, who indicated that some of the old members of the group had to be taken care of, that Mr. Cutler then called Faris Russell of White, Weld and explained that conversation, and that Faris Russell said, "Joe, I understand, and we will fold our hands and await results."

Mr. SWAN. I feel so confident that Potter understood all this, and Cutler understood all this, and I understood all this, I can only ask you to accept it and I really think my correction is correct.

Acting Chairman O'CONNELL. Just not to labor the point, as I understand your interpretation of it, Mr. Cutler was in a position to tell Mr. Russell that this previous financing having been handled by Guaranty, that his firm, that is, Smith, Barney & Co. and other associates in the former deals, would have to be taken care of.

Mr. SWAN. That is right, if we got the business. We at this time had not been named as bankers by the company. This all presupposes our securing the position as banker for the company.

Acting Chairman O'CONNELL. Oh, yes.

Mr. NEHEMKIS. Shall I proceed?

Acting Chairman O'CONNELL. Yes; please.

Mr. NEHEMKIS. Now, returning to the period of negotiations, Mr. Swan, on March 14, 1935, did you not, together with Mr. Cutler, talk with Maurice Newton, of Hallgarten & Co., about this business? Do you recall that?

Mr. SWAN. I believe so.

Mr. NEHEMKIS. And on the following day, March 15, did you not discuss the matter with Mr. Emerich, a partner of Hallgarten, and also a director of Wilson & Co.?

Mr. SWAN. I believe so.

Mr. NEHEMKIS. Now, in the diary entry of Mr. Cutler as of March 18, 1935, he had the following to say [reading from "Exhibit No. 1877"]:

JRS and I talked with Maurice Newton of Hallgarten 3/14/35 and the next day JRS talked with Emerich of Hallgarten, a director of Wilson. We told him we had been working on the business and referred to the old joint account they had with the Guaranty and asked them to join us, which they said they would be glad to do.

Now may I call your attention to the next entry:

We also told them we were committed to White, Weld & Co. for an interest if business resulted.

I continue:

I subsequently reported this to Faris Russell—

Faris Russell is the same Faris Russell, a partner of White, Weld, who again said they were entirely agreeable to leaving the makeup of the group and interests to us. I also reported the Hallgarten development to Ned Potter—

Ned Potter is the same E. A. Potter, Jr., vice president of the Guaranty?

Mr. SWAN. That is right.

Mr. NEHEMKIS (continuing):

who thought it was a wise move.

Now I read to you a subsequent diary entry of April 4, 1935, by John W. Cutler, as follows [reading further from "Exhibit No. 1877"]:

JRS called on Mr. T. E. Wilson in Chicago 4/1 and was very cordially received by him. Explained to him the dissolution of Guaranty Company and status of EBS & Co. and advised him we were very anxious to be given consideration in connection with any financing which he might do.

So that up to this point the company had not yet really decided on who its bankers were to be?

Mr. SWAN. I think that is correct.

Mr. NEHEMKIS. Theoretically it might be anybody's business?

Mr. SWAN. It was entirely in the hands of the company to decide whom they might want to have handle their business.

Mr. NEHEMKIS. And at this particular time, you recall, March and April of 1935, the company was actively considering which banking house would receive the deal?

Mr. SWAN. I presume they were considering it. I don't know; I don't know whether they were devoting such time to it or not. We were paying attention to trying to get it.

Mr. NEHEMKIS. I wonder if that was altogether the case. For example, let me read you a diary entry by Mr. Cutler as of March 26, 1935 [Reading from "Exhibit No. 1877"]:

Newton reported from Emerich, who attended directors meetings today, that the matter of refinancing was not discussed.

Apparently Mr. Cutler was very anxious to know about these things, because at this time he wrote down it was not discussed, and on May 3 of 1935 Mr. Cutler again wrote the following [reading further]:

Ned Potter said Company had engaged Price, Waterhouse to begin necessary work looking towards registration.

In other words things are beginning to pick up.

As far as he knew they had made no commitments with any bankers.

Now although the business had not been definitely awarded to you, you were nevertheless proceeding tentatively at least with the organization of the syndicate, were you not?

FORMATION OF THE WILSON & CO. SYNDICATE

Mr. SWAN. We were discussing it with others, yes. As I have said before, and I think these memoranda show, we were very active in trying to get this and other pieces of business. I think that we thought that one thing that would be helpful in getting this business was to get together a group of people who were persona grata with

the company and would be a group of people with whom the company would like to do business. But we did not have the business at this time. We may be said to have been a little previous in the way we proceeded, but that is what is often done, and previous to people getting a piece of business they will often get together to discuss ways and means of securing it.

Mr. NEHEMKIS. In fact, it is necessary, if you are going to do a piece of syndication, when the deal materializes?

Mr. SWAN. We need a group if it materializes.

Mr. NEHEMKIS. And you considered the advisability at this time of bringing in Field, Glore, now Glore, Forgan?

Mr. SWAN. We did.

Mr. NEHEMKIS. And that was because of Halstead Freeman's connection with the account, was it not?

Mr. SWAN. We were rather strongly of the opinion, in which we were correct, that in this piece of business that the company would undoubtedly want to have a Chicago banker associated with it. The three Chicago banks which had previously been associated with this business were not able to be in the business any longer. We thought that Field, Glore & Co. were the bankers in Chicago most fitted to represent that Chicago market in the business, and we also felt that Halstead Freeman was rather predisposed to them.

Mr. NEHEMKIS. Mr. Cutler, on May 14, 1935, had this to say [reading further from "Exhibit No. 1877"]:

JRS spoke to Newton re inclusion of Field, Glore & Co., on account of Halstead Freeman, who is being retained by the company in connection with proposed financing. Speak to First Boston before going further.

Was not the reason for communicating with the First Boston Corporation, Mr. Swan, due to the fact that Chase Securities Corporation, the predecessor organization of First Boston, had been a member of the old Guaranty Company group?

Mr. SWAN. That was one reason. Another reason was that, of course, they would be very acceptable members of any group to do a piece of business of this sort.

Mr. NEHEMKIS. Mr. Chairman, subject to the arrangement previously made, that certain documents be identified toward the end of the week, I should like at this time to offer in evidence a letter by D. R. Linsley, vice president of The First Boston Corporation, under date of May 18, 1935, addressed to J. R. Briggs, vice president of H. M. Byllesby and Company, marked "Confidential." Mr. Linsley wrote as follows to Mr. Briggs [reading from "Exhibit No. 1880"]:

On last Thursday Joe Swan of Edward B. Smith & Co. called up Harry Addinsell and told him that they were working on a refunding operation for Wilson & Co.

In checking up our past historical records, it came to my attention that over a period of years the financing for Wilson & Co. was handled by a group of which the Guaranty Company was the manager and in which were included Chase Securities Corporation, Blair & Co., Hallgarten & Co., First Trust and Savings Bank, Chicago, Continental and Commercial, Chicago and Illinois Merchants Trust Company, Chicago.

For your confidential information, the Guaranty, Chase, Blair and Hallgarten each had an interest of approximately 18.75%.

In the early part of March Miles Warner—

Is that Warner or Werner?

Mr. SWAN. I don't know.

Mr. NEHEMKIS (continuing) :

In the early part of March Miles Warner told me of the discussions which he had had with one of the Wilsons and asked if we would be interested in figuring on the business and on the 15th of March, in response to a wire from George Leuess, I indicated to Miles that we were unwilling to undertake a deal along the terms similar to Swift or to enter into negotiations which involved a high degree of competition and stated that if the company was prepared to sit down and discuss the best form of financing, we would be interested in principle in so doing. I did not hear anything further about this matter and assumed that it had died a natural death.

At the time of my discussions with Miles, I did not realize that the Chase Securities Corporation had always been in the group headed by the Guaranty Company of New York. As Mr. Swan indicated that they had discussed this matter, we told him that we would be delighted to join with him in discussing the re-formation of the old group. We told Mr. Swan of Miles Warner's connection with one of the Wilsons and of our discussions with him and said that we would like to see—when, as and if the group is formed—that H. M. Byllesby and Company had a position in the business and that we assumed that this would be agreeable to him. He indicated to us that he also wanted to consider the inclusion of White, Weld and Field, Glorie.

I know that you will protect me on this information, but I want you to know the facts in connection with these discussions and while, naturally, I would not want to attempt to involve you in making any decision, it seems to me that it is most logical that the old group should have a legitimate claim on the business—particularly with the tie-in with the Guaranty Trust Company and if we can work it around so that H. M. Byllesby and Company has an original interest and an appearance position, it would seem to be the desirable thing to do—rather than to get into a competitive mess.

The document is offered in evidence, Mr. Chairman.

Acting Chairman O'CONNELL. It may be received.

(Letter referred to was marked "Exhibit No. 1880" and is included in the appendix on p. 12799.)

Mr. HENDERSON. Has Mr. Swan a copy of this? The next to the last paragraph relates to him. I don't want him to miss it.

Mr. SWAN. All right.

Mr. NEHEMKIS. Subject to the same arrangement, Mr. Chairman, I shall offer a memorandum by Mr. H. M. Addinsell of The First Boston Corporation, under date of May 16, 1935, relating to the Wilson & Company financing. Mr. Addinsell wrote as follows [reading from "Exhibit No. 1881"]:

Mr. Swan asked me yesterday whether we would join with them in re-constituting the old group which the Guaranty headed for Wilson & Co. business. After discussion here I told Mr. Swan that we would be glad to do so. I called his attention to the fact that Mr. Miles Warner of Byllesby, who is a personal friend of some of the younger Wilsons, had talked with Mr. Leuess about the matter some months ago, but that we told Mr. Warner that we would not want to be drawn into competition for the business and we have heard nothing about it since.

This memorandum from which I have just read is offered in evidence.

Acting Chairman O'CONNELL. It may be admitted.

(The memorandum referred to was marked "Exhibit No. 1881" and is included in the appendix on p. 12800.)

Mr. NEHEMKIS. Mr. Chairman, subject to the same understanding, I shall offer in a moment a telegram from Mr. Linsley, of The First Boston Corporation, under date of March 15, 1935, over the Byllesby wire to Miles Warner in Chicago, as follows [reading from "Exhibit No. 1882-1"]:

After thorough discussion Wilson and Company we have decided as matter of policy that we are unwilling to undertake a deal along terms which are

similar to Swift or to enter into negotiations which involve a high degree of competition. (Stop) If company is prepared to sit down and discuss best form of financing we would be interest¹ in principle in so doing.

May the document be received in evidence?

Acting Chairman O'CONNELL. It may be received.

(The telegram referred to was marked "Exhibit No. 1882-1" and appears in full in the text on p. 12526.)

Mr. NEHEMKIS. Now, Mr. Swan, you will recall that that telegram from which I read was sent three months before the previous memorandum by Mr. Addinsell of May 16, and that would seem to indicate that Mr. Addinsell's point of view was not a spur-of-the-moment decision, and that it was rather one which reflected the general position of his corporation. Would it not so seem to you, Mr. Swan?

Mr. SWAN. I don't know what Mr. Addinsell's views were. I wouldn't want to interpret his telegram.

Mr. NEHEMKIS. Now, on June 6, 1935, did not the company finally decide to put the financing in your hands?

Mr. SWAN. On June 6? I think that is the correct date.

Mr. NEHEMKIS. But it was not to be leadership of the account?

Mr. SWAN. It was to be a joint leadership by ourselves and Field, Glore.

Mr. NEHEMKIS. Do you recall the membership of the syndicate upon which E. B. Smith and Field, Glore & Co. had tentatively agreed?

Mr. SWAN. I have read it over. I don't recall it without a memorandum.

Mr. NEHEMKIS. I show you a memorandum dated September 9, 1935, and ask you whether this does not refresh your recollection.

Mr. SWAN. I identify this.

(The memorandum referred to was marked "Exhibit No. 1882-2" and is included in the appendix, p. 12801.)

Mr. NEHEMKIS. Will you tell me the tentative members agreed upon at the time, if you can?

Mr. SWAN. This list which I am reading was a list tentatively agreed upon by Forgan, of Field, Glore, and myself before consultation with the company; this was to be submitted to the company: Edward B. Smith & Co.; Field, Glore; First Boston; Speyer & Company; Hallgarten & Co.; Bancamerica-Blair Corporation; White, Weld; Goldman, Sachs.

Mr. NEHEMKIS. Now the new names in that account as tentatively agreed upon were Field, Glore; White, Weld; and Goldman, Sachs—

Mr. SWAN (interposing). And Speyer.

Mr. NEHEMKIS. And Speyer. E. B. Smith had had some previous relation to the business through the association with Guaranty, the First Boston through the Chase Securities, Hallgarten having been joint account in the old days, Bancamerica-Blair also.

Mr. SWAN. That is correct.

Mr. NEHEMKIS. Now, was not White, Weld's name suggested because of your prior commitment to them?

Mr. SWAN. I suppose that is a proper way to put it, yes; that and because they were, of course, primarily—each one of these that were suggested for these accounts, when suggested by the bankers, I think it is because they will add something to the account, and

¹ So in original.

White, Weld would make good members of the account in the first place, and in the second place because we had had these discussions with them about which we have had testimony.

Mr. NEHEMKIS. Now, in the world of investment banking, as in other activities, I suppose considerations other than those immediately at hand enter into determinations, and in the Wilson & Company syndication "banking politics" entered into the picture. For example, your list of participants was not altogether acceptable to the company. The company desired to include in the syndicate certain other houses, do you recall?

Mr. SWAN. I do.

Mr. NEHEMKIS. Can you recall at this time the names of the other houses that the company wanted included in the syndication?

Mr. SWAN. I do, yes.

Mr. NEHEMKIS. What were the names of the houses that the company wanted included in the syndication?

Mr. SWAN. At one period of the discussion, the following is the list which was tentatively named: Edward B. Smith; Field, Glore; Speyer; Kuhn, Loeb; Hallgarten; Lazard; Lee Higginson; Hornblower; and Goldman, Sachs. The first list I read was before consultation with the company; the second list was after consultation with the company.

Mr. NEHEMKIS. Mr. Mathers, will you take the stand for a moment please?

I show you two documents, one a memorandum on the stationery of the S. S. *Roma*, and the other a letter from Mr. James D. Cooney to Mr. Wilson. Will you tell me where you obtained these documents?

Mr. LLOYD MATHERS (Securities and Exchange Commission). These are photostatic copies of originals in the files of Wilson & Co., Chicago, Ill.

Mr. NEHEMKIS. The documents just identified by Mr. Mathers are offered in evidence.

Acting Chairman O'CONNELL. They may be admitted.

(The letters referred to were marked "Exhibits Nos. 1883 and 1884" and are included in the appendix on pp. 12802 and 12803.)

Mr. NEHEMKIS. Do you recall the reasons why the company wanted Kuhn, Loeb, Lazard Frères, Lee Higginson, and Hornblower included?

Mr. SWAN. This memorandum states that Mr. Buethe insisted that Speyer appear ahead of all other houses.

Mr. NEHEMKIS. Which memorandum are you reading from?

Mr. SWAN. Memorandum of September 9, 1935. ["Exhibit No. 1882-2."]

Mr. Buethe—

who is the treasurer of the company—

insisted that Speyer appear ahead of all houses except the two leaders, because Speyer had been helpful on the reclassification of the stock last winter and had offered the first refunding plan for the company's consideration. Goldman, Sachs were included at the company's request because they had dealt in the company's commercial paper, and Hornblower was included at the company's request because they also had been of assistance to the company in the matter of reclassification of the company's stock.

INCLUSION OF KUHN, LOEB & CO. IN THE WILSON & CO. SYNDICATE

Mr. NEHEMKIS. Kuhn, Loeb & Co. had never appeared in any of the Wilson & Co.'s syndicates. Kuhn, Loeb, however, was finally included in this syndicate. Is that not correct, sir?

Mr. SWAN. It was, at the request of the company, because of Mr. Elisha Walker's previous connection.

Mr. NEHEMKIS. While you have the document in your hand, read what it says about Mr. Elisha Walker on his firm being included.

Mr. SWAN. A list was agreed to here after discussion [reading from "Exhibit No. 1882-2"]:

subject to the approval of Mr. Thos. E. Wilson, who was expected to return from Europe within a few days * * * with the reservation that it might be necessary to make room for Kuhn, Loeb, who, through Elisha Walker, had put considerable pressure on the company for the business. (Blair, Walker's former affiliation, having had largest interest in previous financing.)

Ultimately Kuhn, Loeb was included in the business.

Mr. NEHEMKIS. As I understand that, Mr. Elisha Walker had formerly been associated with Blair & Co. and had a large participation in the early Wilson business.

Mr. SWAN. And had been very active in the affairs of Wilson & Co. at one time.

Mr. NEHEMKIS. I beg your pardon.

Mr. SWAN. And had been very active in the affairs of Wilson & Co. at one time.

Mr. NEHEMKIS. Subsequently, Mr. Walker became a partner of Kuhn, Loeb & Co.?

Mr. SWAN. He did.

Mr. NEHEMKIS. Kuhn, Loeb had never participated in the early historical accounts of Wilson & Co.?

Mr. SWAN. That is correct.

Mr. NEHEMKIS. However, Mr. Elisha Walker was able to bring Kuhn, Loeb into this financing for one of the largest participations by virtue of the fact that he had formerly had an association with Blair & Co.?

Mr. SWAN. And that Kuhn, Loeb & Co. were a very strong and powerful house who would be acceptable as an addition to any underwriting group of this sort.

Mr. NEHEMKIS. And according to the entry made by J. J. B. of your own organization, Mr. Walker apparently did something else. He [reading from "Exhibit No. 1882-2"]:

Put considerable pressure on the company for the business—

So that you have this anomalous situation. Mr. Walker is formerly associated with Blair. He goes to Kuhn, Loeb. The legacy passes through the personage of Elisha Walker to Kuhn, Loeb. Kuhn, Loeb is included in the syndicate.

Mr. SWAN. It all indicates to me that each and all of us were very active in trying to get business, and if we had a previous connection with the company, we made every effort we could to make ourselves acceptable to the company.

Acting Chairman O'CONNELL. Mr. Walker was doing the same thing that you were doing.

Mr. SWAN. I think he was.

RELATION OF THE INVESTMENT BANKER TO THE ISSUER AND THE INVESTOR

Senator KING. Would it strengthen the securities which were placed upon the market by having a number of reputable and strong investment bankers back of the guaranteeing or underwriting of the securities situation?

Mr. SWAN. I don't think I quite say it would strengthen the security; I think it would strengthen the market for the securities and add public favor to the securities; certain names in offering securities have a very favorable effect on those securities.

Senator KING. Where there are a large number of corporations issuing securities, initially, or for the purpose of refinancing outstanding obligations, does it give to the securities which are issued a higher market value which would inure to the advantage of the stockholders by having the securities endorsed by and disposed of through a number of large and well-known reputable banking houses, investment houses?

Mr. SWAN. Well, I think taking the extreme case, if not well-known, if rather poor investment houses father the security, it is detrimental to this security as opposed to having more reputable and better-known people sponsoring the security. There are a number of groups whose sponsorship of a security would probably result in those securities having the same market value.

Senator KING. It is important, is it not, to find as wide a market as possible for securities?

Mr. SWAN. I think it is very advantageous to the company to have their securities well sponsored and well distributed.

Senator KING. And is it not beneficial to the public generally to have the securities instead of being concentrated in a few buyers, say, in New York City or Chicago, having them distributed and purchased in all parts of the United States?

Mr. SWAN. I think that is advantageous, and of course in the handling of these underwritings, they are eventually distributed all over the United States.

Senator KING. They are not held by a few corporations, then.

Mr. SWAN. Well, only in the case of the private placements where they are held by very few corporations, but when security is initially bought by a banking house or by a group of banking houses, they eventually form what is called a selling group, composed of investment bankers distributed all over the country so that the bonds generally find lodgment pretty well all over the country. Of course, it is true certain securities will find a greater lodgment in Pennsylvania than they will in New England; another security will find a greater lodgment in New England than in Pennsylvania, for tax reasons or reasons of people being more familiar with this or that type of security.

Senator KING. Where there are a number of large investment companies that take over the securities for the purpose of selling them, is there any disposition to depress the market or to depress the value, the original value of the securities so that they will sell for less than they otherwise would sell for, or is it to their advantage to get for the securities offered as large a price as possible for the benefit of the companies that are issuing the securities?

Mr. SWAN. I think the investment banker holds a different role perhaps from people in most other industries. The investment

banker has a very dual duty. He has a duty to the company that he is financing and he has a duty to the public that he is selling the securities to. I think the investment banker is always trying his best to find out what is the right price and that is not of necessity the highest price. If the investment banker isn't clever enough to find a price that is pretty close to the price that the securities will go to after they are issued, he will be unpopular with the borrower. If, on the other hand, he issues them at a price that declines from the offering price, it hurts his market. He has a very delicate position of finding the right price for a security, which is not of necessity the very highest price that at that particular moment the security might possibly be brought out at.

Senator KING. But doesn't it contemplate that the securities shall find markets and the house issuing the securities, or rather the corporation issuing the securities shall receive for its securities as high market price, as under all the circumstances would be just and fair?

Mr. SWAN. The investment banker stands a very much better chance of securing business if he has the reputation of paying corporations a good full price for their securities.

Mr. MILLER. Mr. Swan, if the price declines after issue immediately because it is overpriced, you spoke of the result as far as the investor is concerned, but it also, does it not, hurts the corporation's credit?

Mr. SWAN. Oh, it reacts unfavorably against the company. If a company is a constant borrower—that doesn't mean that they borrow every year, but they borrow every once in a while—it is a very important thing to them that the securities should be favorably received and should be popular with the public and that popularity certainly, as far as I know, is achieved in just about one way, and that is that it is a profitable thing for the investor to buy and not an unprofitable thing for him to buy, so that a decline from the offering price of the security is detrimental to the borrowing corporation, in my opinion, except as Mr. Strauss said this morning, this is the one and only time they are going to borrow, and then presumably they don't care, but there are very few corporations that can say, "This is the last and only time I am going to borrow."

Mr. LUBIN. Mr. Swan, getting back to the question asked by the Senator of Utah relative to the advantage of having firms that have a very good reputation and substantial houses added to a selling group in the sense that such an addition adds to the attitude of the public in its faith of the security, such a thing would not be true under conditions such as has been described in the Wilson & Co. case by the addition of Kuhn, Loeb & Co. under pressure, would it?

Mr. SWAN. I haven't been quite able to hear you.

Mr. LUBIN. Perhaps I can simplify the question. Assuming that the addition of a well-established firm to the group adds to the prestige of the issue, the addition of Kuhn, Loeb under the condition described in this Wilson case would not have had any such effect.

Mr. SWAN. Would not add, you say? Kuhn, Loeb is an important name, very highly thought of by the investing public; I think it has a good effect on any issue.

Mr. LUBIN. Yes; but Kuhn, Loeb specifically provided that their name was not to appear in advertising or on the face of the prospectus, so that the public didn't know they had anything to do with it.

Mr. SWAN. The public may not, but every dealer did. It is the

dealers who know those things. It is not the public who reads the prospectus which is prepared. The public doesn't read these great big prospectuses that we have nowadays; the dealer reads those prospectuses.

Acting Chairman O'CONNELL. But the public buy the bonds.

Mr. SWAN. The public buy the bonds because the dealer has read the prospectus and described the bond to the public from the prospectus, and the dealer makes his appraisal of the security and its value from the prospectus and he has clients who rely on him, and on his say-so to such an extent that they buy those bonds. They, I think, sell them, except to the professional buyer, from these prospectuses today.

Acting Chairman O'CONNELL. It is clear, though, is it not, that the intrinsic value does not depend upon in any tangible way the identity of the underwriters, it depends rather upon the character of the issue.

Mr. SWAN. Only to this extent, that when people are known to have competent staffs and are competent people, I think it is generally conceded that the intrinsic value of the bond has been taken care of through the provisions of the indenture.

Acting Chairman O'CONNELL. Would that depend more on the character of the manager, or the issuer?

Mr. SWAN. The manager of the account, oh, yes.

Acting Chairman O'CONNELL. Kuhn, Loeb apparently had nothing to do with that.

Mr. SWAN. They had nothing to do with that, but their identity with it is helpful, their name is very highly regarded in our business.

Mr. NEHEMKIS. Mr. Chairman, subject to the previous arrangement, I should like to offer in evidence a document from the files of The First Boston Corporation relating to the subject under discussion by Mr. D. R. Linsley under date of June 27, 1935. The memorandum reads as follows (reading from "Exhibit No. 1885"):

While Mr. Burnett Walker of Edward B. Smith & Co. was here this afternoon, he explained the banking politics in connection with the proposed issue of \$20,000,000 bonds for this company.

Field, Glore are going to head the business in the west and Edward B. Smith & Co. in the east. The respective interests in the business are as follows—

And therein appears the list of the group and percentage of participation.

While it has not yet crystallized, it is probable that only the first five names will appear in the advertisement. Mr. Walker explained, confidentially, to me that the senior Mr. Wilson originally wanted Field, Glore to head the business in the west and Kuhn, Loeb in the east, but that for various reasons, Edward B. Smith & Co. was finally selected. Mr. Walker stated that he might want to offer a slight interest to Kuhn, Loeb & Co. and that while he had not definitely made up his mind to do so, he might ask each member of the group to give up 10% of their total to a pool. However, if there is any resistance, he frankly feels that Field, Glore and themselves should make the contribution.

I told Mr. Walker that as far as we were concerned he could write his own ticket. He stated that probably in the course of the next four or five days further details would be made available to us.

I offer the document in evidence.

(The document referred to was marked "Exhibit No. 1885" and is included in the appendix on p. 12803.)

FAILURE OF WHITE, WELD & CO. TO BE INCLUDED IN THE SYNDICATE

MR. NEHEMKIS. Mr. Swan, there was one phase of the "banking politics" that Mr. Burnett Walker did not explain to Mr. Linsley, and that was how did it happen that White, Weld & Co. was not included in the final syndicate, although you felt all along that you had a commitment to them? Will you explain that?

MR. SWAN. I would just like to comment on the words "banking politics." There never was any syndicate, that was more, I won't say dictated, but more laid out by the company than this one was. We consulted together on it. It is obvious that we presented a list and they wanted to add some names and subtract some names, and they wanted this person in for a certain reason, and that person for a certain reason. The banking politics referred to have nothing to do with politics within the group. I think the banking politics have to do, as between the company and certain bankers, such-and-such a banker had helped them in their reorganization, Goldman, Sachs had sold their paper for a good many years, somebody else had done something else. This was certainly one of the most thorough company syndicates. As far as White, Weld were concerned, anything, of course, which we had said to White, Weld had to be subject to the final decision of the company. It was the final decision of the company that they did not want White, Weld in the business.

MR. NEHEMKIS. I merely ask the question, Mr. Swan, because your partner Burnett Walker having discussed the banking politics of the deal and Mr. Linsley having recorded them I was forcibly impressed with the significant omission of the reason for the exclusion of White, Weld & Co., and I am very grateful to you for enlightening us.

MR. SWAN. Is it important for your inquiry why they are excluded?

MR. NEHEMKIS. Yes.

MR. SWAN. May I suggest that you call a witness from the company?

MR. NEHEMKIS. It is not necessary, because I shall continue reading from "Exhibit No. 1867," previously received in evidence, being a letter sent to Mr. Cutler by Faris R. Russell. I now read from that:

Recently when it became apparent that the business was in the immediate making and not having heard from you, I called your office but could not reach you. Later the same day Burnett Walker telephoned me asking for a review from us of the Wilson & Co. matter as between ourselves and yourselves. I gave him the above story.

The committee will recall that I read that previously.

I did not hear further from Burnett Walker but he came over and saw Ben Clark, expressed extreme regret and stated that embarrassing as it was to your firm, we could not be included in the Wilson & Co. business, that *Field, Gloré & Co.* and the company itself had refused your request that we be included.

The above chronological story of this matter is based on memoranda made immediately after the various conversations took place, and, hence, is neither hazy in our minds nor subject to misunderstanding or faulty recollection.

The above is not sent to you as a record on which we make any claim on you for Burnett Walker has already stated your position.

The experience, however, makes it necessary for us to raise a question as to another matter so I request that you show this letter to Joe and ask that he let us know just what he wishes us to understand with respect to the position --

reserved for us in the matter of Columbia Gas & Electric, about which I have never had any conversation with him, but it was cleared with Joe by our mutual good friend, Jim Hutton.

In order that you and Joe may have before you the Columbia Gas & Electric situation—

and so on, the remainder not being relevant to your discussion.

Mr. HENDERSON. Who is Mr. Hutton?

Mr. NEHEMKIS. Mr. Hutton is with W. E. Hutton, and Company, an investment banking firm.

I now refer the committee to "Exhibit No. 1867" previously offered in evidence, subject to Mr. Swan's identification of a similar letter obtained from the files of his company, and the reason I am referring to them both is because of certain pencil notations on one and so that the record may be thoroughly correct and proper in all respects, we had better have them both.

Mr. SWAN. You handed me the White, Weld one.

Mr. NEHEMKIS. Oh, I am sorry. This has already been marked for the record.

Mr. SWAN. May I see it?

Mr. NEHEMKIS. This being committee "Exhibit No. 1867."

Mr. SWAN. May I point out something in this?

Mr. NEHEMKIS. I just want to have one other identified. Mr. Whitehead, will you take the stand, please.

Is this a copy of a letter which you obtained from the files of White, Weld & Co.?

Mr. WHITEHEAD (Securities and Exchange Commission). That is correct.

Mr. NEHEMKIS. Now on this letter in connection with the statement, Mr. Chairman, that [reading from "Exhibit No. 1867"]:

Field, Gloré and the company itself had refused your request that we be included—

There appears the following pencil notation:

B. Walker says this is incorrect.

Was that the comment you wanted to make?

Mr. SWAN. That is the comment I wanted to make. I have discussed this with him and he tells me that Field, Gloré & Co. had nothing to do with the exclusion of White, Weld.

Mr. NEHEMKIS. That is precisely the reason why I wanted both letters in the record so that correction would appear.

The document from the files of White, Weld & Co. is now offered.

Acting Chairman O'CONNELL. It may be admitted.

(The letter referred to was marked "Exhibit No. 1886" and is included in the appendix, p. 12804.)

Mr. SWAN. I have here, Mr. Chairman, three or four papers which have to do rather with the technical and mechanical handling of our business. Here is one which we call [reading from "Exhibit No. 1887-1"]:

Schedule of operations followed by Smith, Barney & Co. when acting in capacity of head manager in wholesaling a new issue

And you see it gives here all of the things that we have to go through when we are doing that.

I have here a "Buying Department Work Sheet" which shows all of the things we do in preparing an issue.

And I have here a memorandum for the Industrial Division of the Buying Department, "Outline for use as Guide in conducting Investigations of Industrial Companies."

And I have here a "Buying Department Work Sheet Form for use in Connection with Issues Headed by other Houses in which we have a Position as an Underwriter."

This record that you are making here is something that will doubtless at some future time be studied by people who are interested in investment banking, and there is a good deal here that is of interest that those interested in investment banking could obtain a good deal of information from. I should like to present it for the record if it is your pleasure that I do so.

Mr. NEHEMKIS. I am very happy to receive it and I recommend it be spread on the records of the committee.

Acting Chairman O'CONNELL. Very well, it may be received for the record.

(The documents referred to were marked "Exhibit No. 1887-1 to 1887-4" and are included in the appendix on pp. 12806-12829.)

Mr. NEHEMKIS. While we were discussing the problem of mechanics, Mr. Swan, will you be good enough to identify this performance record card kept by Edward B. Smith & Co.?

Mr. SWAN. I identify that.

Mr. NEHEMKIS. Will the reporter be instructed to mark two sheets, being the performance record cards or typical examples of performance record cards kept by E. P. Smith & Co. These together with typical cards kept by other investment houses will be referred to on Friday.¹ Since the witness is here, I asked that he identify them.

Acting Chairman O'CONNELL. These will be marked for the record.

(The cards referred to were marked "Exhibit No. 1888" and are included in the appendix on p. 12831.)

PROFESSIONAL CHARACTER OF INVESTMENT BANKING—RESUMED

Mr. SWAN. Mr. Chairman and Mr. Examiner, before I leave the stand, I would like to ask whether it would be proper for me to say a few words about this question of the professional aspect of the banker. As an investment banker, I sat here this morning when you were questioning Mr. Schiff and Mr. Strauss, and I didn't like to break in on that at all, but I think it is something that I would like just to say something about, if you will ask me a question about it, or if I may just volunteer it.

Mr. NEHEMKIS. I would be very happy to have you, if that is the pleasure of the committee.

Acting Chairman O'CONNELL. That is fine, you may go ahead.

Mr. SWAN. I want to say this because it seems to me it is quite important. I don't think the investment banker can claim that his business is a profession. I think the investment banker, however, can claim that it has the characteristics of a profession, that it is

¹ *Infra*, p. 12682.

similar to a profession, that it is not the same as a profession but it has a great many similar characteristics.

I think in addition to that it has what I have spoken about previously in my testimony, this question of the dual capacity, our attitude toward or our relations with the borrower and our relations with the public. I have a feeling—I have had it during this investigation—that the idea of stressing the professional character of our business is not quite accepted. Now we who have a good deal of pride in our business—and I think most of us in our business have a good deal of pride in it—do feel that our business has very professional aspects and we try to make our business as professional as we can. We think it is to the interest of the public that our business be regarded as professional. We think that it helps to carry out our obligations to the borrower and to the public, that the greater professional character it can be given the better, and instead of aiming toward possibly depreciating our business or the character of our business by more severe competition, competitive bidding, and all that sort of thing, I feel very, very strongly that the effort should be to try to raise the character of our business. If our business isn't sufficiently professional today, let us try somehow or other to get it on a more professional basis. I think that is the thing that is going to be for the best interest of the public. Now, Mr. Henderson, this morning you said in some connection with something you were talking about that we were considering the public interest. I think it is the only interest to be considered.

Mr. HENDERSON. I said it was at least slightly tinged with the public interest.

Mr. SWAN. Well, it is the only thing, sir, and I agree that we are talking about the public interest, we are not talking about the interest of the borrower, bank, or investor, but we are talking about the public interest. and I contend and contend very strongly that to raise the character of the investment banking business, to make it more professional rather than less professional, would accrue to the public benefit. If anything happens in connection with our business that makes us mere—what is the word I want—mere—

Mr. NEHEMKIS. Merchants of securities?

Mr. SWAN. Not merchants of securities, just peddlers of bonds, that is not going to accrue to the public interest in any way. I could go on and talk a good deal about the professional aspects, about competition, but I do want to stress this fact that I hope you gentlemen will consider in your deliberations, whether our business shouldn't be raised to a higher level rather than to try to push it down lower.

Mr. NEHEMKIS. Who should do the raising of the character of the business? You said someone should do it. Now who?

Mr. SWAN. We should raise it ourselves. Let me say this, Mr. Nehemkis, that I believe if you gentlemen feel there is a great deal of concentration in a few hands, I believe that that concentration is in few hands because we fellows have tried to make our business professional, because we have approached it on a professional basis, we have emphasized the professional aspect of it, and our attitude toward the borrower and the investor is a professional attitude. I think anything that makes us peddlers of bonds instead of investment bankers, is not in the best interest of the general public.

Mr. LUBIN. Mr. Swan, may I ask a question? Is it your opinion that the addition of competition in the functioning of an industry or a service lowers the standards of the service?

Mr. SWAN. I think that our business is very highly competitive as it is today. I think it is just as competitive as it can be, and I think all of this testimony that has been brought out here indicates it. When there is an opening for anyone to get a new piece of business, every banker in the country is after it. After a banker is selected for a piece of business, I think that the people who have a regard for the professional aspects of the banking business don't try to interfere with friendly and good relationships between banker and client, but every one of us, every one of us, is letting every concern in this country know that we are right there waiting to take business any time an issuer is dissatisfied. Every issuer knows that he can go to a half dozen or a dozen people and they will take his business just like that [snapping his fingers] and in our dealing with our borrowers we are constantly conscious of that fact, that there is great potential competition in our business all the time.

Mr. LUBIN. What would you, for the sake of the committee, say what the industry itself could do or what might be done by some other agency to improve the standards rather than lower them?

Mr. SWAN. Well, I am fearful that competitive bidding would do everything harmful; I think the S. E. C. has done a great deal for our business. I happen to think that the N. R. A., when our business had the opportunity to form a group under the N. R. A., gave us great opportunities. That was destroyed. I think the S. E. C. has done a great deal for the raising of standards of our business, and there have been a great many people in our business all the time whose standards have been very high; I don't mean that there haven't been high standards in our business, I believe there have. I think there have been periods, for instance in the twenties, when terrible mistakes were made, but I do think that the requirements of the S. E. C. for full publicity and various things like that that have been brought about by that law have been very beneficial. Now I am fearful that something is going to be done that will counteract, perhaps, the good things that have been happening to our industry. I think our industry is on a lot better basis and is getting increasingly so. I think this National Securities Association which is just about to become active under the act is going to be beneficial, and I think the tendency of our business is toward a higher basis all the time. I am just fearful that something will be done to retard it.

Mr. LUBIN. If we could just for the moment, for the sake of argument, lay aside that fear, I would appreciate it very much if you could illuminate a bit further your previous statement, namely, that it should be made more professional. I am interested in that.

Mr. SWAN. I think all of these things are tending to do that. I think we within ourselves are tending to become more professional all the time. Mr. Nehemkis asked who will raise the standards. We should raise them, but we should have the help of people who can help us. The S. E. C. is helping to raise the standards of our business, but they can do things that will lower the standards of our business. I think things are improving in our business. There are some pretty high standards in my business, I think.

Mr. LUBIN. But you do feel if you had more competition in the business you would be lowering the standards?

Mr. SWAN. No; it isn't a question of competition. I think the competition exists, but there is a very distinct difference between competition and competitive bidding. I think competitive bidding would very materially lower the standards of our business. I think instead of getting away from this concentration which we are fearful of, it would increase the concentration. For instance, my firm is in a much better position to bid competitively than a lot of others. I think a lot of us would have a great deal better chance of getting this business on competitive bidding than we have now, maybe, but it wouldn't do the business any good, because competitive bidding—of course, you can talk at great length about competitive bidding—does two things: competitive bidding not only raises prices to the investor, it certainly does that, but it lowers the quality of the goods, and I think a professional attitude and approach to this business raises the quality of the goods and gets the security, gets the goods, to the investor at a proper price. That isn't necessarily the top price but it is very close to it.

Mr. LUBIN. In other words, you don't feel that the same mechanism that is used in the markets for selling other types of goods and services, namely, that if the bidder who secures the order can't deliver the goods the market should take care of that and that his competitor who can do a better job should survive, should be used here?

Mr. SWAN. I think our business is a different type of business from that. I say we are not professional but we have many characteristics similar to a profession, or we should have, and I believe we have. I hate to see that broken down. I believe this dual relationship with the investor is quite different from any other business that I know of.

Mr. LUBIN. Thank you.

Acting Chairman O'CONNELL. We are very grateful to you, Mr. Swan.

(The witness, Mr. Swan, was excused.)

FINANCING AN UNDERWRITING TRANSACTION—THE DAY-LOAN PROCEDURE

Mr. NEHEMKIS. Mr. Chairman, I should like to ask your indulgence for about 8 minutes. There are certain technical details in reference to the day-loan procedure which Mr. Swan and others in the industry have very kindly consented to make available to us. A member of Mr. Swan's organization will testify briefly with regard to the day-loan procedure with respect to certain offerings involving E. B. Smith Co., and then documents will be identified and offered in evidence that have been made available to us by other banking firms. I ask your indulgence in this matter because I regard this mechanical technique as rather important to the committee's understanding of this problem of the investment banking processes that we are engaged in.

Mr. Coulson, will you take the stand, please?

Acting Chairman O'CONNELL. Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COULSON. I do.

TESTIMONY OF WILLIAM H. COULSON, SMITH, BARNEY & CO.,
NEW YORK, N. Y.

Mr. NEHEMKIS. Will you state your full name?

Mr. COULSON. William H. Coulson, Garden City, N. Y.

Mr. NEHEMKIS. And you are a member of the staff of Smith, Barney & Co.?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. It is the customary procedure, is it not, Mr. Coulson, for an underwriter when making payment for his participation to present a check to the manager drawn to the order of the corporation whose securities have been offered by the underwriting group?

Mr. COULSON. It is.

Mr. NEHEMKIS. And immediately after the closing there is released to each of the underwriters by the syndicate manager the total number of bonds to be taken down by such underwriter for his own retail distribution?

Mr. COULSON. That is right.

Mr. NEHEMKIS. And any bonds given up by an underwriter to the selected dealers, or, as the case may be, for institutional sales, are retained by the manager against receipt?

Mr. COULSON. That is right.

Mr. NEHEMKIS. And before the close of business on the initial delivery day, does not the manager reimburse the underwriters for the bonds retained?

Mr. COULSON. He does.

Mr. NEHEMKIS. Usually each underwriter takes out with a bank what is known as a day loan in order to pay for his commitment?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. The day loan may be for the entire amount of the underwriting commitment or for a portion thereof?

Mr. COULSON. It is usually for a portion of it.

Mr. NEHEMKIS. In any event, the balance is financed out of firm capital?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. It is the practice of the New York banks, is it not, to require the underwriter who applies for a day loan to execute an instrument which sets forth the purpose for which the loan is to be used, that is to say, to pay in whole or in part the purchase price of the securities that are being offered?

Mr. COULSON. It is a rather technical document.

Mr. NEHEMKIS. I think I have one here. Is not this the instrument, which happens to be of the Guaranty Trust Co. of New York, characteristic of the ones used by New York banks?

Mr. COULSON. Yes; it is.

Mr. NEHEMKIS. It is also required, is it not, Mr. Coulson, under the terms of this instrument which you have just identified, that the securities upon receipt by the underwriter be held in trust for the bank as collateral security for the loan?

Mr. COULSON. It is.

Mr. NEHEMKIS. In other words, the underwriter becomes a trustee with respect to such securities in behalf of the bank?

Mr. COULSON. Yes; the proceeds of the day loan are used in facilitating the delivery of the securities by the underwriter.

Mr. NEHEMKIS. Now, in the case of such instruments, do you know whether or not it is stated that with respect to such securities a lien or mortgage shall arise in favor of the bank?

Mr. COULSON. On the securities involved; yes.

Mr. NEHEMKIS. That is the practice, incidentally, of the Guaranty Trust Co.?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. Does not the bank generally charge 1 percent interest for this accommodation?

Mr. COULSON. They do.

Mr. NEHEMKIS. Having executed the day-loan agreement, the underwriter usually sends it back to the bank, together with his check for the face amount of the loan, and then another check for 1 day's interest. Is that not correct?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. Generally the underwriter will take out this loan with the trustee of the new issue as a kind of compliment, perhaps, to the trustee, or perhaps, with banks where the underwriter keeps his deposits or otherwise uses such bank for his banking requirements?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. In the event all of the bonds retained by the manager are not sold by the initial delivery day, does not the manager arrange a loan, using the unsold bonds as collateral?

Mr. COULSON. Yes; unless he wishes to use other capital for that purpose.

Mr. NEHEMKIS. And if that be the case, each underwriter is thereafter reimbursed from the proceeds of the loan made for its account?

Mr. COULSON. That is right.

Mr. NEHEMKIS. Each underwriter then uses the proceeds of such loan plus the proceeds he receives on the delivery of the bonds against his retail sales to liquidate the day loan?

Mr. COULSON. And plus the amount he receives from his contribution to the selling group.

Mr. NEHEMKIS. Or in the event he has failed to sell all of the bonds which have been allotted to him by the manager for his own retail distribution, and if his capital is insufficient, arrangement can be made for a collateral loan on the balance of the unsold bonds. Is that not correct?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. The day loan then serves a rather important function in the underwriting business in that it releases for the period of its duration the underwriter's capital?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. To put the matter differently: If it were not for this credit accommodation by the commercial banks, underwriting

capital might become frozen and the extent of underwriting activities perhaps become somewhat restricted?

Mr. COULSON. That is a rather involved question. The day loan is a credit facility. It makes for a very simple operation.

Mr. NEHEMKIS. Now, Mr. Coulson, just in the interests of economy, can you furnish me with an answer to my question? I think it is a difficult question to ask you without much preparation. We might suggest that you write to us about it, when you can more leisurely study it. Would you prefer that?

Mr. COULSON. I would say the day loan is used as a convenience. The underwriter might be in possession of wholly owned marketable securities equal the amount of his commitment which he could take to the bank and borrow against. Then he would pay the issuing corporation, but at the end of the day he would be in funds over and above his normal cash requirements, so he would have to go back to the bank and take up his wholly owned securities and bring them back to his office.

Mr. NEHEMKIS. Now, I would like to turn with you, if I may, to specific examples of the day-loan procedure just by way of illustration. Suppose we take, as our first, the Pure Oil Co. 5 percent cumulative preferred stock. E. B. Smith & Co.'s commitment with respect to this offering was for 58,936 shares at 100 in the principal amount of \$5,893,600, is that correct, sir?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. And that was the amount which was paid to the Pure Oil Co.?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. Was not the closing date for this transaction October 22, 1937?

Mr. COULSON. It was.

Mr. NEHEMKIS. And did not E. B. Smith & Co. arrange a day loan at Guaranty Trust Co. on October 22 for \$4,500,000?

Mr. COULSON. They did.

Mr. NEHEMKIS. And was not the balance, in the amount of \$1,393,600 made up from a bank balance of E. B. Smith & Co. at the Guaranty Trust Co. on October 21 in the amount of \$2,282,656.57?

Mr. COULSON. It was.

Mr. NEHEMKIS. Thus making a total of \$5,893,600?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. Now was not the day loan paid off before the close of business on October 22?

Mr. COULSON. It was.

Mr. NEHEMKIS. However, this offering having been a slow moving deal with an unsold balance of stock remaining, was there not a collateral loan made by the Guaranty Trust Co.?

Mr. COULSON. There was.

Mr. NEHEMKIS. And this loan was on 58,936 shares at a loan value of \$64 per share?

Mr. COULSON. That is right.

Mr. NEHEMKIS. Or the aggregate amount of \$3,771,904?

Mr. COULSON. That is true.

Mr. NEHEMKIS. So that the difference between \$64 and \$100 which was financed by the firm was \$2,121,696?

Mr. COULSON. It was.

Mr. NEHEMKIS. Those two figures giving a total of \$5,893,600?

Mr. COULSON. Yes.

Mr. NEHEMKIS. Now suppose we turn, as a second illustration, to the \$85,000,000 Shell Union Oil Corporation, 15-year 2½-percent debentures due July 1, 1954. Was not Smith, Barney & Co.'s underwriting commitment for \$4,000,000 at a value of 96¼?

Mr. COULSON. Ninety-six and a quarter is right.

Mr. NEHEMKIS. Ninety-six and a quarter.

Mr. COULSON. Yes.

Mr. NEHEMKIS. And that would represent \$3,850,000?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. And the accrued interest amounted to \$6,388.88?

Mr. COULSON. That is right.

Mr. NEHEMKIS. So that the total paid to Shell Union Oil Corporation by Smith, Barney & Co. was \$3,856,388.88?

Mr. COULSON. Correct.

Mr. NEHEMKIS. Was not the closing date for this transaction July 24, 1939?

Mr. COULSON. It was.

Mr. NEHEMKIS. Now, of the total underwriting commitment, was there not financed by day loan of the Guaranty Trust Co. on July 24, 1939, \$3,300,000?

Mr. COULSON. That is right.

Mr. NEHEMKIS. And was not the remainder made up by a bank balance of Smith, Barney & Co. at the Guaranty at that time, at the close of business July 21, \$851,234.74?

Mr. COULSON. That is true.

Mr. NEHEMKIS. So that the amount taken from Smith, Barney & Co.'s bank balance for this purpose was \$556,388.88?

Mr. COULSON. That is right.

Mr. NEHEMKIS. And those two figures represent a total of \$3,856,388.88?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. Now let us together recapitulate the situation. The underwriting involved \$4,000,000?

Mr. COULSON. That is right.

Mr. NEHEMKIS. They have a give-up to the selling group of \$750,000?

Mr. COULSON. That is right.

Mr. NEHEMKIS. Which left a balance for retail sales of \$3,250,000?

Mr. COULSON. Correct.

Mr. NEHEMKIS. Now there were additional bonds unsold to the dealers taken down in the amount of \$274,000?

Mr. COULSON. That is right.

Mr. NEHEMKIS. So that there was a total for retail sales of \$3,524,000?

Mr. COULSON. That is correct.

Mr. NEHEMKIS. And they were sold at a retail price of 97¾?

Mr. COULSON. That is right.

Mr. NEHEMKIS. Giving a total of \$1,624,000?

Mr. COULSON. Correct.

Mr. NEHEMKIS. So that as of July 28 there was an unsold balance of \$1,900,000?

Mr. COULSON. That is right.

Mr. NEHEMKIS. However on July 28 this unsold balance was in fact sold?

Mr. COULSON. That is right.

Mr. NEHEMKIS. So that none of these bonds were pledged for a collateral loan?

Mr. COULSON. From July 24 until July 28.

Mr. NEHEMKIS. Thank you very much, Mr. Coulson.

Now before you leave may I ask you to identify that document which you have in your hand as one which was prepared by you and other members of your organization and made available to us pursuant to our request?

Mr. COULSON. Yes; this is the document I prepared.

Mr. NEHEMKIS. And is it your signature which appears on the letter of transmittal?

Mr. COULSON. Yes; that is my signature.

Mr. NEHEMKIS. Thank you very much, Mr. Coulson.

(The witness, Mr. Coulson, was excused.)

Mr. Whitehead, please take the stand.

Were the following documents obtained by you from the houses indicated and will you be good enough to state which houses?

Mr. WHITEHEAD (Securities and Exchange Commission). These documents were obtained from Kidder, Peabody & Co., The First Boston Corporation, and Halsey, Stuart & Co.

Mr. NEHEMKIS. And you have certain instruments that were furnished to you by several banks, have you not?

Mr. WHITEHEAD. I have.

Mr. NEHEMKIS. And which banks furnished those instruments?

Mr. WHITEHEAD. These were furnished by the investment banking houses that I have just mentioned.

Mr. NEHEMKIS. And they are the—

Mr. WHITEHEAD (interposing). Forms used.

Mr. NEHEMKIS. By which banks?

Mr. WHITEHEAD. They are used by the Guaranty Trust Co., the National City Bank of New York, the Bank of the Manhattan Co., Chase National Bank of the City of New York, the City National Bank & Trust of Chicago, The Continental National Bank & Trust Co. of Chicago, and The Manufacturers Trust Co. of New York.

Mr. NEHEMKIS. Thank you, Mr. Whitehead.

May it please the committee, I ask first that the document dated September 1, 1939, identified by Witness Coulson be admitted in evidence.

Acting Chairman O'CONNELL. It will be admitted.

(The letter referred to and accompanying schedules were marked "Exhibits Nos. 1889-1 to 1889-5" and are included in the appendix on pp. 12832-12836.)

Mr. NEHEMKIS. And that the several documents and bank instruments identified by Witness Whitehead likewise be spread on the records of this committee.

Acting Chairman O'CONNELL. May I ask if those documents indicate by title what they are?

Mr. NEHEMKIS. They do, sir.

Acting Chairman O'CONNELL. They may be admitted.

(The documents referred to were marked "Exhibits Nos. 1890 to 1894, 1895-1 and 1895-2, and 1896" and are included in the appendix on pp. 12837-12854.)

Mr. NEHEMKIS. The witnesses tomorrow appearing in connection with the financing of the Standard Gas & Electric Co. are as follows: Mr. Victor Emanuel, Mr. Joseph H. Briggs, Mr. Allen Dulles of Sullivan & Cromwell, and Mr. Fuller of the J. Henry Schroder Banking Corporation.

Acting Chairman O'CONNELL. The committee will stand in recess until 10:30 tomorrow morning.

(Whereupon at 4:30 p. m. the committee recessed until 10:30 a. m. on Thursday.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

THURSDAY, JANUARY 11, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment on Wednesday, January 10, 1940, in the Caucus Room, Senate Office Building, Representative Clyde Williams, presiding.

Present: Representative Williams (acting chairman), Senator King; Messrs. Henderson, O'Connell, and Brackett.

Present also: Clifton M. Miller, Department of Commerce; Peter R. Nehemkis, Jr., special counsel; Samuel M. Koenigsberg, associate attorney, and Lawrence R. Brown, investigator, Securities and Exchange Commission.

Acting Chairman WILLIAMS. The committee will be in order.

Mr. HENDERSON. Mr. Chairman, today the Securities and Exchange Commission Investment Banking Section continues with that part of the presentation which is related to the contracts and understandings existing between investment banking firms and corporations which are issuers of securities. Today, however, the case selected shifts the scene from what you might call the "deer runs" and the "salt licks" of Wall Street to the international theater, and banking concerns in Belgium, England, Paris, Berlin, and New York are concerned.

The case to be presented involves another aspect which we thought important to present to this committee, a case in which a banking firm which has both investing and underwriting functions utilizes to a certain extent the investment portion of its business as an aid in securing contracts for future issues.

This leads me, Mr. Chairman, to point out, as I have wanted to for some time, that the Investment Banking Section has been at work with a small staff for quite a long period. A really complete presentation, even along the narrowed lines we indicated at the outset, could probably have occupied the attention of this committee for many, many weeks. As you are aware, numerous other subjects, probably 40, press for hearing before this committee.

That means we have had to select certain cases for presentation. We have had to narrow down the number of cases, investment banking houses, and statistics concerning them, to those we felt were illustrative. We have adopted, as you know, the case method because I think it is apparent to the committee that if we had relied merely on the cold information supplied by prospectuses and the generalized testimony of men in the investment banking field, the committee

would have had no opportunity for critical analysis of the varied functions of investment banking.

There were several attempts on the part of witnesses to play down the implication of terminology which certainly would not have come before the committee had we not utilized private memoranda and private letters. We take no great delight in exposing to public view private and confidential information, but I will be glad to rest our case on the necessity of doing so in order to obtain a real basis, as I said before, for judgment by the committee.

I think one other thing might be said at this time which I have wanted to say. Generally there has been associated with the banking inquiries, with anything banking, a certain amount of feeling about exercise of influence upon the investigators and upon the people responsible for the presentation. I am prepared to say today, and I think Counsel Nehemkis will agree with me, that despite the fact that we have touched many of the most important investment banking houses in this country, no improper influence or pressure of any kind whatsoever, political or economic, has been attempted to be exercised on this staff. I think it is worth while noting that at this point, because certainly there has been no interference in any way. In the completeness of the presentation I think the responsibility for choice of what would be presented has lodged with Counsel Nehemkis. Is that correct, Mr. Nehemkis?

Mr. NEHEMKIS. Absolutely correct, sir.

Mr. HENDERSON. I think we are ready to proceed.

AGREEMENTS BETWEEN UNDERWRITERS AND CORPORATIONS ISSUING SECURITIES

Mr. NEHEMKIS. Mr. Chairman, before calling my first witness, there is a bit of old business from yesterday which requires but a moment. The committee will recall that I had occasion to ask Mr. Lewis Strauss¹ of Kuhn, Loeb & Co., whether he knew of the existence of agreements or understandings or contracts between investment banking firms and issuers of securities, and Mr. Strauss said he did not. I then stated to the committee that either this morning or tomorrow, I would have occasion to offer in evidence some 29 or 30 contracts of that nature. I should like to keep my word with you this morning and take this occasion of offering in evidence 29 contracts containing preferential rights to future financing entered into at various times between investment-banking firms and corporate issuers of securities.

Of these 29 contracts, 19 are as nearly as can be ascertained presently in full force and effect.

In the case of four of these contracts, the parties who are underwriters are out of business and it is questionable whether or not successors to such underwriters, if any, have succeeded to the rights under such contracts.

In the case of six of these contracts, Mr. Chairman, they have been canceled by the mutual consent of the parties thereto.

¹ Supra, p. 12496.

This pile of contracts is perhaps too great to ask the committee to print, and so I ask leave of the committee that they be filed with the committee, and in lieu of printing these contracts, an abstract of the provisions of each of these contracts be spread on the record of the committee.

Acting chairman WILLIAMS. Has the source from which those contracts came been placed in the record?

Mr. NEHEMKIS. On each abstract appears the source. For example, the first one which happens to be a contract between the Airplane Manufacturing & Supply Corporation and the underwriter, being G. Brashears & Co. of Los Angeles, the source says, "From registration statement, Securities & Exchange Commission."

The next one happens to be, and this I assure you was a pure coincidence, Associated Gas & Electric Co., and the source is Halsey, Stuart & Co., New York, and the name of my staff associate who obtained it appears.

Acting Chairman WILLIAMS. Very well, they may be admitted.

(The contracts referred to were marked "Exhibits Nos. 1897 to 1925" and are on file with the committee. The abstracts accompanying each contract were numbered accordingly and are included in the appendix on pp. 12854-12860.)

Mr. NEHEMKIS. Mr. Joseph H. Briggs will take the stand, please.

Acting Chairman WILLIAMS. Do you solemnly swear the testimony you are about to give in the matter now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRIGGS. I do.

TESTIMONY OF JOSEPH H. BRIGGS, CHAIRMAN, EXECUTIVE COMMITTEE, AND EXECUTIVE VICE PRESIDENT, H. M. BYLLESBY & CO., CHICAGO, ILL.

Mr. NEHEMKIS. Mr. Briggs, will you state your full name and address, please?

Mr. BRIGGS. Joseph H. Briggs. I live in Highland Park, Ill.

Mr. NEHEMKIS. At the present time, Mr. Briggs, you are chairman of the board of directors and chairman of the executive committee and executive vice president of H. M. Byllesby & Co.?

Mr. BRIGGS. We have no chairman of the board; I am chairman of the executive committee and executive vice president.

Mr. NEHEMKIS. And H. M. Byllesby & Co. is an organization devoted to investment banking, is it not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. You were a director of Standard Gas & Electric Co. at one time, were you not?

Mr. BRIGGS. I was a director of Standard Gas & Electric Co. I would say for 10 or 15 years, resigning some time in 1936.

Mr. NEHEMKIS. You had also been a director of Standard Power & Light Co. at one time, had you not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And a director of some of the subsidiaries of Standard Gas & Electric?

Mr. BRIGGS. I was a director of two or three of the subsidiaries, as I remember.

RELATIONSHIP OF H. M. BYLLESBY & CO. TO STANDARD SYSTEM OF UTILITY COMPANIES

Mr. NEHEMKIS. H. M. Byllesby & Co., the organization with which you are now associated, was originally an organization devoted to furnishing services for utility companies and other business organizations interested in the utility field. Is that not correct, sir?

Mr. BRIGGS. At the beginning, H. M. Byllesby & Co. did operate, supervise, and manage utility properties.

Mr. NEHEMKIS. And in connection with its operation and supervision of such properties, did not Byllesby acquire small utility properties here and there throughout the country?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And in connection with these acquisitions did not H. M. Byllesby & Co. operate these companies itself?

Mr. BRIGGS. They did until about 1921.

Mr. NEHEMKIS. And at that particular time what was the occasion for Byllesby ceasing to operate these properties?

Mr. BRIGGS. A separate corporation was created, a management and service corporation, whose stock was turned over to the Standard Gas & Electric Co. That corporation continued the operation and supervision of these properties.

Mr. NEHEMKIS. What payment did H. M. Byllesby & Co. receive for turning over the properties to Standard Gas?

Mr. BRIGGS. H. M. Byllesby & Co., as I remember it, received no payment.

Mr. NEHEMKIS. Did you receive any securities of the company to which the properties had been turned over?

Mr. BRIGGS. If there were any securities turned over, they have been a very small amount.

Mr. NEHEMKIS. What was the consideration, if any, for turning over these properties?

Mr. BRIGGS. I do not remember at this time.

Mr. NEHEMKIS. You can't recall at this time why it was that Byllesby turned over a number of utility properties to another system?

Mr. BRIGGS. Well, I think we all felt it would be much better to have our operating and supervision company owned by the holding company which owned the subsidiary properties.

Mr. NEHEMKIS. But as a businessman of long standing, you don't want me to believe, and I am sure you don't want the committee to believe, that there was no consideration involved in making this transfer.

Mr. BRIGGS. We had an investment in common stock of Standard Gas & Electric Co.

Mr. NEHEMKIS. Prior to the transfer of the property?

Mr. BRIGGS. That is correct, and to the extent that the profits would come in from the operating and supervising company, to that extent we would get some benefit on our common stock.

Mr. NEHEMKIS. Between 1913 and 1919, did not H. M. Byllesby & Co. build up its own securities distributing organization?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And during those years did you not specialize in public-utility securities?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And in connection with this specialization in public-utility securities, did you not also specialize in the financing of companies within the Standard Gas system?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Do I understand correctly, Mr. Briggs, that from the time of the incorporation of Standard Gas & Electric in 1910, until 1928 or '29, that Byllesby maintained control of Standard Gas & Electric by means of stock ownership and through various interlocking directorates?

Mr. BRIGGS. By control, you mean 51 percent of the voting stock?

Mr. NEHEMKIS. Something of that nature.

Mr. BRIGGS. I do not believe at any time between 1920 and '29 we had actually 51 percent of the voting stock. I think the amount may have approximated 40 percent.

Mr. NEHEMKIS. Without, however, having had that legal requirement of voting control, is it not a fact that during this period, H. M. Byllesby & Co. to all practical purposes did have control through stock ownership?

Mr. BRIGGS. I would say that is a correct statement.

Mr. NEHEMKIS. And there were various interlocking directorates throughout the system, were there not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. As a matter of fact, by November 9, 1936, did not H. M. Byllesby & Co. own about 76 percent of the Series B common stock of Standard Power & Light?

Mr. BRIGGS. I can answer that by saying I believe that is approximately correct.

Mr. NEHEMKIS. At the present time does not Standard Power & Light hold the following securities of Standard Gas & Electric: Some 40,000 shares of \$7 cumulative prior preference stock and 1,160,000 shares of common?

Mr. BRIGGS. I have not had an opportunity to recently check the holdings of Standard Power, but they do own in excess of 50 percent of the common stock of Standard Gas & Electric Co.

Mr. NEHEMKIS. And the common holdings are over 50 percent of all outstanding?

Mr. BRIGGS. Of Standard Gas?

Mr. NEHEMKIS. Yes.

Mr. BRIGGS. That is correct.

THE STANDARD SYSTEM—CONSTITUENT COMPANIES—ASSETS

Mr. NEHEMKIS. Now, can you tell me, Mr. Briggs, what the principal companies are that make up the Standard system, as we shall be using that phrase "Standard system" throughout the day?

Mr. BRIGGS. The principal subsidiary companies—

Mr. NEHEMKIS (interposing). May I interrupt just for a moment? As you go over this list, for the convenience of the committee, so they see the breadth of the system perhaps you would also indicate generally the territory served by the companies you will enumerate.

Mr. BRIGGS. Philadelphia Co., which in itself is a holding company, controls the Duquesne Light Co., Equitable Gas Co., and those companies serve the territory in and around Pittsburgh, Pa.

The Northern States Power Co. serves the territory extending from on the north Minot, N. Dak., to some place in Iowa, and extending as far east as Lake Michigan. It is rather integrated, an interconnected property, and pretty well covers that territory.

The Louisville Gas & Electric Co. serves the town of Louisville, and surrounding territory, with both gas and electricity.

The Oklahoma Gas & Electric Co. serves the principal towns of Oklahoma City, Muskogee, Norman, and I believe serves about 50 percent of the State with electricity.

Do you want the smaller companies?

Mr. NEHEMKIS. Then you have the Mountain States Power.

Mr. BRIGGS. The Mountain States Power Co., is a small company operating in the territory of the States of Oregon, Idaho, and runs down to Wyoming.

Mr. NEHEMKIS. Then you have the San Diego Consolidated.

Mr. BRIGGS. The San Diego Consolidated serves both gas and electricity in the city of San Diego and surrounding territory.

Mr. NEHEMKIS. There is also the Wisconsin Public Service Co.

Mr. BRIGGS. The Wisconsin Public Service Co. serves both gas and electricity to a territory situated in the center of Wisconsin.

Mr. NEHEMKIS. Then you also have the Southern Colorado Power Co.

Mr. BRIGGS. The Southern Colorado Power Co. serves Pueblo and surrounding territory.

Mr. NEHEMKIS. And you also own some traction lines out in San Francisco, do you not, the Market Street Railway Co.

Mr. BRIGGS. Well, they own an interest in the Market Street Railway.

Mr. NEHEMKIS. Haven't you got some utility properties down in Mexico?

Mr. BRIGGS. One or two isolated properties.

Mr. NEHEMKIS. What do you call that, Public Service Co. of Mexico?

Mr. BRIGGS. When you say "we," I suppose you are referring to Standard Gas.

Mr. NEHEMKIS. Yes. What does the Standard Gas call that, do you know?

Mr. BRIGGS. I do not know.

Mr. NEHEMKIS. Have you any idea as of the present time, Mr. Briggs, what the total assets of the Standard system companies represent?

Mr. BRIGGS. Well, I would say they would be in excess of \$1,000,000,000.

Mr. NEHEMKIS. Do you know, roughly speaking, what they were about 1936?

Mr. BRIGGS. Well, they would be slightly less; there has been some construction program since that time.

Mr. NEHEMKIS. That \$1,000,000,000 figure that you mentioned a moment ago wouldn't include certain affiliates where Standard Gas & Electric owns anywhere between 40 or 50 percent of the stock, for example, the Market Street Railway Co., Mountain States Power, and Northern States Power, would it?

Mr. BRIGGS. My figures contemplated the inclusion of those properties.

Mr. NEHEMKIS. In other words, from the description of the territory served, which you have just given to the committee, and the assets involved here, we have a pretty substantial utility system, haven't we?

Mr. BRIGGS. I would say that is correct.

Mr. NEHEMKIS. It compares with any of the big systems in this country.

Mr. BRIGGS. That is correct.

STANDARD'S ACQUISITION OF INTEREST IN PHILADELPHIA CO. SYSTEM—
AGREEMENT WITH LADENBURG, THALMANN & CO.

Mr. NEHEMKIS. Now, in 1924 and 1925, did not Byllesby and Standard Gas & Electric attempt to acquire stock control of the companies grouped under the Philadelphia Co.?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And these companies had been associated with Ladenburg, Thalmann & Co. and their banking associates who in turn controlled a large portion of this stock. Is that not substantially correct?

Mr. BRIGGS. Those companies have been associated with Ladenburg, Thalmann, and other bankers. I do not believe that they have a large substantial stock.

Mr. NEHEMKIS. They had some stock.

Mr. BRIGGS. They had some stock, that is correct.

Mr. NEHEMKIS. A question of degree, that would be perhaps open to further research.

Mr. BRIGGS. I would say that is correct.

Mr. NEHEMKIS. Do you happen to know at this time who the banking associates of Ladenburg, Thalmann, were in these earlier financings?

Mr. BRIGGS. The First National Bank of New York, and the Chase Security Corporation, Lee, Higginson & Co., the Haystone Securities Corporation.

Mr. NEHEMKIS. The Haystone Securities Corporation, if I may be permitted to interrupt, was the personal holding company of the late Mr. Hayden, wasn't it?

Mr. BRIGGS. No; the Haystone Corporation was a security affiliate of Hayden, Stone.

Mr. NEHEMKIS. You mentioned the Union Trust of Pittsburgh.

Mr. BRIGGS. The Union Trust Co. of Pittsburgh.

Mr. NEHEMKIS. You said the First National Bank of New York. Did you not mean the First Security Co., the affiliate of the First National Bank of New York?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And the Chase Securities Corporation was the affiliate of the Chase National Bank, was it not?

Mr. BRIGGS. That is true.

Mr. NEHEMKIS. Now, Byllesby's attempt to obtain control of the Philadelphia Co. system through stock acquisitions was not altogether successful, was it?

Mr. BRIGGS. Eventually it was successful.

Mr. NEHEMKIS. But at the earlier period there were certain difficulties, were there not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. So that instead of, at the earlier time, obtaining complete control did not Byllesby come to an agreement with Ladenburg, Thalmann concerning the control of the properties about June of 1925?

Mr. BRIGGS. I would not remember the date, but I believe that is substantially correct.

Mr. NEHEMKIS. And was not the net effect, shall I say, of this agreement to give Byllesby a voice substantially equal to that of Ladenburg, Thalmann in the affairs of the Philadelphia Co. system?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And did not Ladenburg, Thalmann also emerge with a stock interest in Standard Power & Light?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. I now offer in evidence an agreement dated the 19th day of June 1925, between Ladenburg, Thalmann & Co., H. M. Byllesby & Co., and Standard Gas & Electric Co. This was obtained from the files of the Securities and Exchange Commission, Docket No. 31-420, Commission's exhibit No. 29. It is a matter of public record. It is now offered in evidence.

(The agreement referred to was marked "Exhibit No. 1926" and is included in the appendix on p. 12860.)

Acting Chairman WILLIAMS. Do you want this for the record?

Mr. NEHEMKIS. I think it should be printed in full, if the committee please.

Acting Chairman WILLIAMS. It will be accepted.

Mr. NEHEMKIS. I now offer in evidence a memorandum of agreement between H. M. Byllesby & Co. and Standard Gas & Electric Co., dated June 19, 1925. This document which I am offering in evidence was likewise obtained from the files of the Securities and Exchange Commission, being Docket No. 31-420, Commission's exhibit No. 30.

(The memorandum referred to was marked "Exhibit No. 1927" and is included in the appendix on p. 12865.)

Mr. NEHEMKIS. Mr. Briggs, was not the Standard Power & Light Co. made the repository for the securities of the holding companies which controlled the Philadelphia Co. stock?

Mr. BRIGGS. That is true.

Mr. NEHEMKIS. Was not Byllesby & Co. somewhat anxious at this time to establish a more complete measure of control over the Philadelphia Co. utilities?

Mr. BRIGGS. Well, we were anxious to consolidate all of these properties within the Standard Gas system.

Mr. NEHEMKIS. And by an agreement of March 22, 1928, Ladenburg, Thalmann agreed to certain sales of securities, do you recall that?

Mr. BRIGGS. I am not familiar with those transactions because I did not handle them.

Mr. NEHEMKIS. You, of course, were aware that they had taken place?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And are you not aware that there was provided for at that time, on your own knowledge and information and belief, that the resignation of certain Ladenburg, Thalmann partners

and associates from voting trusts and offices connected with the Pittsburgh Utilities was contemplated?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And the execution of proxies for Ladenburg, Thalmann's remaining holdings of Standard Power & Light stock in favor of certain corporation action contemplated by Byllesby or Standard Gas & Electric was likewise contemplated?

Mr. BRIGGS. I believe that is correct.

AGREEMENT WITH RESPECT TO FUTURE FINANCING OF STANDARD POWER & LIGHT CO., HOLDING COMPANY OF PHILADELPHIA CO. UTILITIES, MARCH 1926

Mr. NEHEMKIS. I offer in evidence an agreement of Ladenburg, Thalmann & Co., Standard Gas and Electric and Byllesby, dated March 22, 1926. This document, like the other previously offered, is obtained from the files of the Securities & Exchange Commission, being Commission's Exhibit No. 31, in volume 2 of exhibits in connection with the file 31-420.

Mr. Chairman, may I suggest that it merely be filed and not printed. It is a public record. Anybody who wants to make reference to it in the future can go up to the S. E. C. and look at it.

Acting Chairman WILLIAMS. All right; it may be filed.

(The agreement referred to was marked "Exhibit No. 1928" and is on file with the Securities and Exchange Commission.)

Mr. NEHEMKIS. Mr. Briggs, did not this agreement, to which reference has been made, contain a provision with respect to future financing?

Mr. BRIGGS. I can't recollect at the present time that it did.

Mr. NEHEMKIS. Perhaps this will refresh your recollection about it. Paragraph 2 (c) of the agreement to which reference has been made provides as follows [reading from "Exhibit No. 1928"]:

That Ladenburg and Byllesby shall at all times be the bankers for Standard Power & Light Corporation and United Railways Investment Company and their respective successors, and for all their respective subsidiaries and sub-subsidiaries (including Market Street Railway Company) as the same may now or hereafter exist in connection with the issuance of any securities and other related matters, and that all profits therefrom shall be divided between them equally, subject to such allowance as may be jointly made to other bankers.

Now, was not the effect of this provision to provide for a sharing in financing profits between Byllesby and Ladenburg, Thalmann?

Mr. BRIGGS. I think that is correct.

Mr. NEHEMKIS. The agreement also contained provision with respect to management engineering fees, did it not?

Mr. BRIGGS. I do not remember that.

Mr. NEHEMKIS. I read to you from paragraph 2 (d) of the agreement. Perhaps this will recall it your mind [reading further from "Exhibit No. 1928"]:

That all management, engineering and similar fees, less expenses incurred in connection with the handling of such fees, and less fees paid to any person, firm or corporation not directly or indirectly connected or affiliated with any party thereto, to be paid by Standard Power and Light Corporation or by United Railways Investment Company, or their respective successors, and by their respective subsidiaries and sub-subsidiaries, as the same may now or hereafter exist, shall be paid to the aforesaid Standard Power and Light Cor-

poration or to some corporation all the stock of which is owned by Standard Power and Light Corporation or to some other corporation or fund or account jointly agreed upon between Ladenburg and Byllesby.

Does that refresh your recollection?

Mr. BRIGGS. No; it does not. I have forgotten that completely.

Mr. NEHEMKIS. Do you recall whether or not this agreement to which we were referring also contains provision with respect to counsel?

Mr. BRIGGS. No, I do not remember that.

Mr. NEHEMKIS. Perhaps this will refresh your memory [reading further from "Exhibit No. 1928"]:

2 (e) That Reed, Smith, Shaw and McClay and any firm successor to it shall for a period of five (5) years from the date of this agreement, unless Ladenburg and Byllesby shall otherwise in writing agree, be General Counsel in Pittsburgh to the Philadelphia Company (or its successors) and to all its subsidiary and sub-subsidiary corporations, substantially as heretofore; that Van Vorst Siegel & Smith, and any firm successor to it shall (in conjunction with Cummins, Roemer & Flynn, or other General Counsel) for a period of five (5) years from date of this agreement, unless Ladenburg and Byllesby shall in writing agree, be counsel in connection with corporate matters relating to Standard Power and Light Corporation, United Railways Investment Holding Corporation, Pittsburgh Utilities Corporation, United Railways Investment Company, Philadelphia Company, their respective successors, and all subsidiaries and sub-subsidiaries thereof, as the same may now or hereafter be constituted, to the extent of assuring Van Vorst, Siegel & Smith aggregate compensation of at least Seventeen Thousand Five Hundred Dollars (\$17,500.) annually in connection with general corporate matters.

Does that refresh your recollection, sir?

Mr. BRIGGS. No, it does not. I might say at this time that my duties at that time were manager of our bond department, which involved the sale and distribution of securities and these matters were handled by other officials.

Mr. NEHEMKIS. So that you wouldn't be able to testify, I take it, at this time why it was thought necessary to freeze counsel into this agreement at the time?

Mr. BRIGGS. No, I cannot.

Mr. NEHEMKIS. Returning for a moment to the provision with respect to future financing, Mr. Briggs, there were several security issues by Standard Power & Light and its subsidiaries beginning with the year 1926, were there not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And did not the participations follow the lines laid down in the agreement substantially?

Mr. BRIGGS. My memory is that they did.

SECURITY ISSUES PURSUANT TO AGREEMENT OF MARCH, 1926

Mr. NEHEMKIS. Mr. Chairman, I offer in evidence at this time a chart or table showing the securities sold to the public by the Standard Power & Light Corporation, and its subsidiaries, for the period March 22, 1926, through December 31, 1929, and the percentages of participation therein on the part of a number of investment banking firms. I also want to offer in evidence at this time a document furnished to the Commission by the Standard Gas & Electric Company showing the sources on which this table was predicated.

I leave it to your judgment, sir, whether you desire to have this merely filed or incorporated. It is merely for your convenience.

Acting Chairman WILLIAMS. Have you any recommendation to make about it? The committee has had no time to examine it.

Mr. NEHEMKIS. I should say, sir, that if it is the pleasure of the committee "Exhibit No. 1930," which you now have in your hand, should be filed with the committee and the table printed in full.

Acting Chairman WILLIAMS. It may be filed and the table may be admitted to the record.

(The table referred to was marked "Exhibit No. 1929" and is included in the appendix on p. 12867. The document referred to was marked "Exhibit No. 1930" and is on file with the committee.)

Mr. O'CONNELL. Mr. Briggs, is the Standard Power & Light Company the top holding company?

Mr. BRIGGS. It is at the present time. It was not at that time.

Mr. O'CONNELL. What was Standard Gas?

Mr. BRIGGS. Standard Gas & Electric Company.

Mr. O'CONNELL. As of that time the Standard Gas & Electric was the holding company and the Standard Power & Light was an operating company?

Mr. BRIGGS. Standard Power & Light was the holding company, owning the securities of the properties operating in Pittsburgh. Standard Gas & Electric Co. owned the securities of the rest of the properties throughout the United States. In 1930, the transaction was put through turning all the properties over to Standard Gas and in turn making Standard Power the top holding company, holding 52 percent of the common stock of the Standard Gas.

Mr. NEHEMKIS. I believe that the committee has before it the table which has now been received in evidence. I should like to direct your attention, if I may, to certain facts which appear in that table. It will be noted that the groups with one exception were composed of the same banking houses, apart from the occasional exclusion of the two smaller participants. It will also be noted that the principal underwriters were H. M. Byllesby Company and the Ladenburg, Thalmann group. It will be further noted that with the exception of one issue the interests of the several houses remained substantially the same through each of the issues from 1927, the first after the agreement, through 1929.

It will be noted further from this table that when a newcomer appeared each of the other houses took a small proportionate cut. Throughout all of this financing Byllesby and Ladenburg, Thalmann were the leaders of the financing. Each of these houses obtained either one-quarter of the issue or slightly less. In one case you will note, in the Standard Power and Light 6's of 1957, this percentage participation was changed.

STOCKHOLDERS' SUITS AGAINST H. M. BYLLESBY AND COMPANY AND
STANDARD POWER & LIGHT CO., 1929

Mr. NEHEMKIS. Mr. Briggs, in the spring and fall of 1929 were there not several stockholders' suits brought against Byllesby and Standard Gas & Electric?

Mr. BRIGGS. There was one stockholders' suit; I don't remember several.

Mr. NEHEMKIS. Was there not a mandamus proceeding brought against Standard Gas & Electric by a group of stockholders for the inspection of its books? Did that not occur in June of 1929?

Mr. BRIGGS. I do not remember.

Mr. NEHEMKIS. Do you recall that in September of 1929, suit was instituted by a group of stockholders and an action was brought against Byllesby for an accounting?

Mr. BRIGGS. I do not remember; no, sir.

Mr. NEHEMKIS. Do you recall that this accounting action was accompanied by a demand that Byllesby turn over to the Standard about \$5,000,000 of profit resulting from its transactions with Standard?

Mr. BRIGGS. I can't identify the particular suit you have in mind.

Mr. NEHEMKIS. Now, you say you do recall that there was one suit, can you identify that suit? What was that about?

Mr. BRIGGS. I am not sure; it was a suit, some proceedings, brought against us in connection—well, at this time I don't remember for what purpose.

Mr. NEHEMKIS. Do you know who brought it, a group of stockholders or someone else?

Mr. BRIGGS. It was brought by a group of stockholders in New York.

Mr. NEHEMKIS. Do you recall who some of these stockholders were or the names of the stockholders who instituted the suit?

Mr. BRIGGS. I believe it was brought—if there was a suit, I do not know that—brought by the Schroder banking interests.

Mr. NEHEMKIS. The Schroder banking interests?

Mr. BRIGGS. Stock owned by the Schroder banking interests.

Mr. NEHEMKIS. And do you recall who the interests were that made up the Schroder banking interests?

Mr. BRIGGS. No; I do not.

H. M. BYLLESBY & CO.'S CONTROL OF STANDARD POWER & LIGHT CO. THROUGH HOLDINGS OF MANAGEMENT PREFERRED STOCK

Mr. NEHEMKIS. Now, wasn't there also a demand that Standard Gas & Electric \$1 par voting preferred stock held by Byllesby, and which in turn gave Byllesby control over the system, be canceled?

Mr. BRIGGS. I believe there was some discussion about canceling it at that time, but I do not know whether or not it was a formal demand.

Mr. HENDERSON. Do I understand correctly that the preferred stock had voting rights?

Mr. BRIGGS. In which company?

Mr. HENDERSON. Standard Gas & Electric.

Mr. BRIGGS. No; the only stocks that had voting rights were the common stock and a special—you are correct, it was a special preferred stock called a management stock.

Mr. HENDERSON. A management stock?

Mr. BRIGGS. Yes.

Mr. NEHEMKIS. That was a peculiar stock. It was worth \$1 and each stock had one vote?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. One-dollar, one-vote stock? Now, you said there were some discussions about canceling Byllesby's interest in this stock. Discussions with whom, Mr. Briggs? Do you remember?

Mr. BRIGGS. No; I do not recall that.

Mr. NEHEMKIS. The Schroder banking interests?

Mr. BRIGGS. Well, I do not know that these stockholders were actually Schroder banking interests, but they were probably identified with foreign interests.

Mr. NEHEMKIS. They were, to use a blunt word, "stooges"?

Mr. BRIGGS. No; I do not know that, even.

Mr. NEHEMKIS. They were "fronting" for foreign interests?

Mr. BRIGGS. Is that a question?

Mr. NEHEMKIS. Were they?

Mr. BRIGGS. I do not know that.

Mr. NEHEMKIS. Now the voting power obtained by Byllesby through these holdings that we have been speaking of were approximately 40 percent of the voting power of all classes of the Standard Gas & Electric stock, were they not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Do you recall at this time how much Byllesby paid for this stock?

Mr. BRIGGS. Which stock is that?

Mr. NEHEMKIS. This \$1 preferred stock which had one vote per share?

Mr. BRIGGS. Paid \$1 per share for it.

Mr. NEHEMKIS. What was the aggregate cost to Byllesby?

Mr. BRIGGS. One million shares were offered to the stockholders and I believe all except—I believe that only 2,000 shares were taken by the stockholders, and Byllesby bought the rest.

Mr. NEHEMKIS. Cost you about \$1,000,000?

Mr. BRIGGS. Close to \$1,000,000.

Mr. NEHEMKIS. And do you recall how much the other voting stock cost?

Mr. BRIGGS. Our holdings of Standard Gas common?

Mr. NEHEMKIS. Per vote; yes.

Mr. BRIGGS. We had accumulated whatever holdings we had of Standard Gas common from time to time in the market; it would be impossible for me to say just what it cost us.

Mr. NEHEMKIS. But of this preferred stock to which we have been making reference and which was held by the public, that didn't cost one dollar, and that didn't have the right of one vote per stock held, did it?

Mr. BRIGGS. The ordinary preferred stock of Standard Gas? Oh, no, that was stock in one case with no par value and in another case \$100 par value.

Mr. NEHEMKIS. How about the common stock?

Mr. BRIGGS. The common stock, as I remember it, was no par value.

Mr. NEHEMKIS. Did that cost more than \$1 a share?

Mr. BRIGGS. Well, Standard Gas common was issued from time to time by the treasury at varying prices.

Mr. NEHEMKIS. Do you recall at this time whether any of that common stock ever did have a price of \$1 per share?

Mr. BRIGGS. The ordinary Standard Gas common?

Mr. NEHEMKIS. Yes.

Mr. BRIGGS. I do not believe that is correct.

Mr. NEHEMKIS. Now, you are unable to recall at this time who initiated the series of litigation against Standard Gas and Byllesby, the time to which we are referring?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. You do think, however, that the instigating of a series of steps in a move to perhaps oust Byllesby from control was done under the leadership of the Schroder interests?

Mr. BRIGGS. No, I do not believe it was done under the leadership of Schroder interests; I think the first large stockholdings of Standard Gas were owned by the Loewenstein interests in Europe.

ACQUISITION OF STANDARD POWER & LIGHT CO. STOCK BY THE LOEWENSTEIN
AND EMANUEL INTERESTS

Mr. NEHEMKIS. Do you recall that about 1927 and 1928 two particular interests began buying into Standard Gas & Electric common?

Mr. BRIGGS. Well, the only one I remember at that time is the Loewenstein interests, which I think accumulated stock in 1927.

Mr. NEHEMKIS. And that was done through the Hydro Electric Securities Corporation, was it not?

Mr. BRIGGS. I am not sure; that may be right.

Mr. NEHEMKIS. And when you speak of the Loewenstein interests you refer to the late Captain Alfred Loewenstein, the Belgian financier, do you not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And do you also recall that one of these two interests that began buying into common at this time was a group represented by Mr. Victor Emanuel?

Mr. BRIGGS. Well, you are referring again to 1927?

Mr. NEHEMKIS. Between 1927 and 1928.

Mr. BRIGGS. Well, I do not know.

Mr. NEHEMKIS. You can't buy up common over night; it takes a little time.

Mr. BRIGGS. I do not know just which period Mr. Emanuel and his associates started to accumulate stock. I imagine it was a little bit later.

Mr. NEHEMKIS. Now, did not the interests or the foreign interests represented by Captain Loewenstein demand representation on the board of Standard Gas & Electric?

Mr. BRIGGS. It did.

Mr. NEHEMKIS. And Mr. John O'Brien, who was then the president and a dominant figure in this system, refused that demand, did he not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Did not counsel for Mr. Emanuel's interests, as well as the Hydro Electric interests representing Captain Loewenstein, demand access to the books?

Mr. BRIGGS. I am not familiar with that. It may be correct.

Mr. NEHEMKIS. Do you recall that this demand was refused?

Mr. BRIGGS. No; I do not.

Mr. NEHEMKIS. Do you recall that immediately after such demands, to which reference has been made, that suits were brought by the respective interests?

Mr. BRIGGS. Well, I think I have testified that there was talk of suits being brought. Whether or not they were actually brought I do not know.

UNITED STATES ELECTRIC POWER CORPORATION (USEPCO) AND ITS ORGANIZERS

Mr. NEHEMKIS. Do you recall that about September 1929—we are moving a little farther now—that several additional financial interests joined hands with Captain Loewenstein's group and Mr. Emanuel's group?

Mr. BRIGGS. Well, I was not familiar with the operations of that group at all.

Mr. NEHEMKIS. Do you recall a company known as United States Electric Power Corporation?

Mr. BRIGGS. I do.

Mr. NEHEMKIS. And do you recall who formed that corporation on or about September 10, 1929?

Mr. BRIGGS. I do not know who the original incorporators were.

Mr. NEHEMKIS. You have some general idea of the people back of that corporation?

Mr. BRIGGS. Subsequently I did learn.

Mr. NEHEMKIS. Who were they?

Mr. BRIGGS. Mr. Emanuel, Mr. Riggs.

Mr. NEHEMKIS. Mr. Riggs?

Mr. BRIGGS. Mr. Riggs, R. T. Riggs, attorney in New York, Mr. Langley, Mr. Granbery, Mr. Seagrave of United Founders Corporation. They were the principal men, I believe.

Mr. NEHEMKIS. And Mr. Langley is the head of W. C. Langley & Co.?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Now was not also the Hydro-Electric Securities Corporation interested in United States Electric Power?

Mr. BRIGGS. I believe they were.

Mr. NEHEMKIS. And the J. Henry Schroder Banking Corporation?

Mr. BRIGGS. I believe they were.

Mr. NEHEMKIS. And the Seaboard National Corporation?

Mr. BRIGGS. Yes, sir, I remember that name, also.

Mr. NEHEMKIS. And A. C. Allyn & Co.?

Mr. BRIGGS. And A. C. Allyn, that is correct.

Mr. NEHEMKIS. And American Founders Corporation?

Mr. BRIGGS. Well, the Founders is part of the Founders group.

Mr. NEHEMKIS. And United Founders Corporation?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And the latter two are investment trusts?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And have we mentioned Harris, Forbes & Co.?

Mr. BRIGGS. No, I believe they had a small interest, but I am not sure.

Mr. NEHEMKIS. And Harris, Forbes & Co. and W. C. Langley & Co. and A. C. Allyn & Co. and J. Henry Schroder Banking Corporation were all investment banking firms?

Mr. BRIGGS. I am not sure about Schroder being an investment banking concern at that time.

Mr. NEHEMKIS. And Mr. Emanuel's company, Albert Emanuel & Co., was an investment banking house, was it not?

Mr. BRIGGS. I do not believe they came into the investment banking picture until later.

Mr. NEHEMKIS. And Koppers United was also interested for a short time, wasn't it?

Mr. BRIGGS. I do not know that.

Mr. NEHEMKIS. These concerns pooled their Standard Gas & Electric holdings in the United States Electric Power Co., did they not?

Mr. BRIGGS. I subsequently found that out, yes.

Mr. NEHEMKIS. And Victor Emanuel was the president of U. S. Electric Power Co.?

Mr. BRIGGS. He became president, but I do not know when.

GENERAL SETTLEMENT BETWEEN USEPCO AND STANDARD POWER & LIGHT CO.—THE BANKING MEMORANDUM OF DECEMBER 1929

Mr. NEHEMKIS. Now, these various interests we have gone over, united interests in U. S. Electric Power, obtained a sufficiently powerful position in Standard Gas, did they not, to obtain joint control not only over the system, but with your support as well?

Mr. BRIGGS. An arrangement was made in 1929.

Mr. NEHEMKIS. Now, as a part of the general settlement following this new alignment of interests, was not a memorandum prepared embodying an agreement between Byllesby, U. S. Electric Power and Ladenburg, Thalmann?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And this memorandum was dated, was it not, December 21, 1929?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. I show you this memorandum and ask you whether you recognize it?

Mr. BRIGGS. I do.

Mr. NEHEMKIS. Is that your signature which appears among the signatories to the agreement?

Mr. BRIGGS. No; it is not.

Mr. NEHEMKIS. Whose signature is that?

Mr. BRIGGS. I think the document is all signed by the same person, evidently a copy of a copy.

Mr. NEHEMKIS. Who is the Mr. Briggs referred to there?

Mr. BRIGGS. J. H. Briggs is myself.

Mr. NEHEMKIS. Did you sign that document? Did you sign the original of which this is a copy?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Thank you, sir. And this document is entitled "Banking," is it not?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And the other signatories to it, if you recall, were Mr. Victor Emanuel, representing U. S. Electric Power Corporation as its president?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. And Walter T. Rosen, a general partner in Ladenburg, Thalmann & Co.?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence, may it please the committee.

Acting Chairman WILLIAMS. It will be accepted.

(The document referred to was marked "Exhibit No. 1931" and is included in the appendix on p. 12868.)

Mr. NEHEMKIS. Now, did not the agreement of December 21, 1929, which is now in evidence before this committee, embody a division of the future financing of the system, Mr. Briggs?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. Subject to certain particular situations specifically set forth in the agreement, did not this agreement provide that 75 percent of all future financing of the Standard Gas & Electric system was to go to United States Electric Power Co., and 25 percent was to go to Byllesby?

Mr. BRIGGS. That is correct.

Mr. NEHEMKIS. I ask leave of the committee that the witness be dismissed and that I call at this time Mr. Victor Emanuel. I think the witness should remain within call of the committee, but it is not necessary for him to remain in the witness chair.

Acting Chairman WILLIAMS. You may be excused, Mr. Briggs, for the present.

(Mr. Briggs was excused, to remain within call.)

Mr. NEHEMKIS. Mr. Victor Emanuel, will you please take the chair?

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EMANUEL. I do.

TESTIMONY OF VICTOR EMANUEL, PRESIDENT, STANDARD POWER & LIGHT CORPORATION, AND CHAIRMAN, FINANCE COMMITTEE, STANDARD GAS & ELECTRIC CO., NEW YORK, N. Y.

Mr. NEHEMKIS. Will you state your full name and address, Mr. Emanuel, please?

Mr. EMANUEL. Victor Emanuel, 895 Park Avenue, New York.

Mr. NEHEMKIS. You were formerly senior partner of Emanuel & Co., were you not?

Mr. EMANUEL. For about 3 or 4 years.

Mr. NEHEMKIS. And what was the business of Emanuel & Co.?

Mr. EMANUEL. Emanuel & Co., as I recall it, was—I don't know—formed in 1927 to 1928 and were purely a brokerage house up till 1934, 1935, and after that period at times they went into or they were in the investment banking business.

Mr. NEHEMKIS. Are you not now a special partner in Emanuel & Co.?

Mr. EMANUEL. I am.

Mr. NEHEMKIS. You are a director of several of the companies in the Standard Gas system, are you not, Mr. Emanuel?

Mr. EMANUEL. Two.

Mr. NEHEMKIS. Which ones are they?

Mr. EMANUEL. Standard Power & Light Corporation and Standard Gas & Electric Co.

Mr. NEHEMKIS. You are chairman of the board in both of these organizations are you not?

Mr. EMANUEL. I am president of Standard Power & Light Corporation and until recently was chairman of Standard Gas & Electric, but now I am chairman of the finance committee of Standard Gas & Electric.

Mr. NEHEMKIS. And do you not hold any offices in the Philadelphia Co.?

Mr. EMANUEL. No; I used to.

Mr. NEHEMKIS. And you no longer hold an office in the Duquesne Light Co.?

Mr. EMANUEL. No.

Mr. NEHEMKIS. Or in the Louisville Gas & Electric?

Mr. EMANUEL. No.

Mr. NEHEMKIS. You are, however, a director of the Republic Steel Corporation, are you not?

Mr. EMANUEL. I am.

Mr. NEHEMKIS. And you are at present president of the Aviation & Transportation Corporation?

Mr. EMANUEL. I am.

PROGRAM OF UTILITY ACQUISITIONS OF VICTOR EMANUEL AND ALFRED LOEWENSTEIN

Mr. NEHEMKIS. Is it not a fact, Mr. Emanuel, that in associations with the late Capt. Alfred Loewenstein you bought into the Standard Gas system?

Mr. EMANUEL. He bought, or his companies bought, stock in Standard Gas considerably before I did.

Mr. NEHEMKIS. And you subsequently became associated with Captain Loewenstein in the venture?

Mr. EMANUEL. Well, not exactly associated, because he died in 1928 and—I mean I don't know what you mean by associated.

Mr. NEHEMKIS. Perhaps it will develop in the course of the testimony.

Mr. HENDERSON. Is that the fellow who fell out of the plane?

Mr. EMANUEL. It was.

Mr. HENDERSON. Was that in 1928?

Mr. EMANUEL. In 1928, I think in the early part of July.

Mr. NEHEMKIS. Now did not you and the late Captain Loewenstein have a number of discussions about the subject?

Mr. EMANUEL. Well, in the winter of 1927 I think it was, I was in England and he had a number of holdings in American companies, including a considerable number of utility companies, and I never met him up to that time, but he had known my father, and he consulted me about some of these American investments.

Mr. NEHEMKIS. In the course of your conversations and discussions with Captain Loewenstein did you not formulate a fairly large-scale program for utility acquisitions which you then thought it was possible to acquire?

Mr. EMANUEL. No; I can't say that I did. He came over here after I met him and he had a number of utility investments which I talked to him about and I think at one time I either wrote him or talked to him about forming a company in which we consolidated a number of public utility companies, but he wasn't interested in that and nothing came of it.

Mr. NEHEMKIS. Mr. Emanuel, will you tell me whether you recognize this memorandum as one prepared by you on or about May 15, 1928?

Mr. EMANUEL. Yes; I think that was.

Mr. NEHEMKIS. Mr. Emanuel, I am going to read you from this document which you have just been good enough to identify for me. This document is entitled "Memorandum of Agreement Covered in Conversation Between Alfred Loewenstein and Victor Emanuel," regarding [reading "Exhibit No. 1932"]:

Standard Gas and Electric Company
American Water Works and Electric Company Inc.
Middle West Utilities Company

- 1—In the first instance, it is desired, if possible, to purchase control of the Standard Gas and Electric Company at a reasonable price.
- 2—If and when this is accomplished, an earnest endeavor would be made—
 - a—To purchase control of American Water Works and Electric Company Inc.
 - b—To effect a merger of the two companies.
- 3—At some future date, to secure control, if possible, of the Middle West Utilities Company on a mutually satisfactory basis.
- 4—In all the above negotiations, Captain Loewenstein and his associates and Victor Emanuel and his associates would be joint partners; that is, each group would take fifty percent interest.
- 5—A new holding company would be formed to finance with the public up to seventy-five percent of the purchase price of the different companies. It would be decided later if these securities would be offered solely in America, or in America, England, and on the Continent.
- 6—The balance of twenty-five percent, or more, to be raised equally by Alfred Loewenstein and his associates and by Victor Emanuel and his associates through their respective holding companies.
- 7—Victor Emanuel and his public utility organization to have operating charge of these properties, Victor Emanuel to receive a satisfactory compensation therefor.
- 8—The banking to be divided equally between banking houses connected with Alfred Loewenstein and banking houses connected with Victor Emanuel. It being understood that initially such bankers are the J. Henry Schroder Banking Corporation and A. C. Allyn & Company.
- 9—Exclusive of dividends on securities purchased, it is understood that revenues will probably inure to the groups through financing, management, and engineering services; these revenues, exclusive of the salary to be paid to Victor Emanuel as operating head of the company, will be divided equally between the groups.
- 10—In the first instance, these charges would probably be paid into the new holding company to be formed to take over these securities. As a half interest in the equity of this holding company would be owned by each group, each would share equally in such earnings.
- 11—It is understood that the bankers, the J. Henry Schroder Banking Corporation and A. C. Allyn & Company, would purchase these securities from friendly hands at prices which would result in their purchases being made on a non-competitive basis and at fair prices.
- 12—Should it be necessary, it is understood that Victor Emanuel could nominate six out of nine of the members of the board of directors of the new holding company, it being further understood, however, that Alfred Loewenstein and his associates would be fully protected by agreement as to all matters such as the purchase and sale of properties; purchase and sale of securities; management, financing, engineering, and all important

phases of the operation and management of the properties. Such agreements are common, and Alfred Loewenstein and his interests would be just as fully protected as though they had half of the members of the board of directors.

13—It is further understood that Victor Emanuel would secure the approval of Alfred Loewenstein of any director he would name of American nationality, or his approval of any change that might be made in the board of directors.

Mr. Emanuel, I want you to examine the document once again. At the top of the document you will find three initials. Will you tell me whose initials they are?

Mr. EMANUEL. I think they must be Mr. Beale's.

Mr. NEHEMKIS. Who is Mr. Beale?

Mr. EMANUEL. I think he is president of Schroder Trust Co.

Mr. NEHEMKIS. And Mr. Beale having read this document wrote on the top: "Not to be taken too seriously."

Mr. EMANUEL. He was absolutely correct. I never received a reply.

Mr. NEHEMKIS. When you wrote this document you took it pretty seriously, didn't you?

Mr. EMANUEL. I suppose I did.

Mr. NEHEMKIS. That is offered for the record of the committee.

Acting Chairman WILLIAMS. It may be received.

(The memorandum referred to was marked "Exhibit No. 1932" and appears in full in the text on p. 12563.)

Mr. NEHEMKIS. Do you recall about the same time you dictated the memorandum now in evidence preparing another memorandum sent to Mr. Fuller and Mr. Beale? I show it to you and ask if that isn't the memorandum. Do you recall preparing that memorandum?

Mr. EMANUEL. No; I do not. I might have.

Mr. NEHEMKIS. It refers to "I" in the latter part and I have assumed from the nature of the discussion that it was written or dictated by you.

Mr. EMANUEL. It might have been, or it might have been somebody else in my office. I can't recall now.

Mr. NEHEMKIS. Would it have been possibly dictated by someone else in close contact with Alfred Loewenstein?

Mr. EMANUEL. No; it would probably be somebody in my office.

Mr. NEHEMKIS. Who else besides yourself knew Captain Loewenstein so intimately as to be able to discuss the details of this long-range program?

Mr. EMANUEL. I can't recall now. Mr. O'Hara, who was an associate of mine, might have been.

Mr. NEHEMKIS. You don't recognize that document at all?

Mr. EMANUEL. In the first place, I can't read this photostatic copy.

Mr. NEHEMKIS. The only other person who could possibly have drafted that memorandum would be Mr. O'Hara?

Mr. EMANUEL. I can't say that.

Mr. NEHEMKIS. You don't know that? I think I shall have to call someone else to identify the document for just a moment, sir, so I can get it into the record. Is Mr. Fuller here? Mr. Fuller, will you be good enough to raise your hand and be sworn?

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in the matter now pending shall be

the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FULLER. I do.

**TESTIMONY OF CARLTON P. FULLER, PRESIDENT, SCHRODER
ROCKEFELLER & CO., INC., NEW YORK, N. Y.**

Mr. NEHEMKIS. Please state your full name and address, for the record.

Mr. FULLER. Carlton P. Fuller, Summit, N. J.

Mr. NEHEMKIS. And what is your business position, sir?

Mr. FULLER. I am president of Schroder Rockefeller & Co., Inc.

Mr. NEHEMKIS. Mr. Fuller, I show you a document which came from your files. Will you be good enough to tell me if you recognize this as a true copy of an original in your possession and custody?

Mr. FULLER. I do not recall of my own memory this document indicated here, and I see nothing to identify it here, but I am willing to accept the probability that there is an original of it. Is that sufficient for your purpose?

Mr. NEHEMKIS. That is, sir. May I ask you one further question? Are you familiar with the contents of that memorandum?

Mr. FULLER. No.

Mr. NEHEMKIS. You have never seen it before?

Mr. FULLER. I wouldn't say that. It is quite a long time ago, but I am not familiar with the contents of it.

Mr. NEHEMKIS. Do you know of your own knowledge or do you know on information and belief that that memorandum was prepared by Mr. Emanuel?

Mr. FULLER. I don't.

TESTIMONY OF VICTOR EMANUEL—Resumed

Mr. NEHEMKIS. Thank you very much, sir. Mr. Fuller, you are dismissed for the moment.

The document which has been identified as coming from the files of Schroder Rockefeller & Co. by Mr. Fuller contains the following interesting paragraphs, and this is the purpose for which I wanted it identified so I might discuss it with you. I read to you from the last page of this memorandum dated May 18, 1928, entitled "Standard Gas and Electric Company, American Water Works and Electric Company, Inc. Middle West Utilities Company (combined with National Electric Power Company)" which the committee will recall are the same three companies that are referred to in a previous memorandum prepared and identified as having been prepared by Mr. Emanuel. [Reading from "Exhibit No. 1971"]:

Notwithstanding the fact that the entire transaction might be financed out for \$137,000,000, provided we could purchase the controls above outlined, I agree with Captain Loewenstein that it would be good policy for us to have some amount of actual cash in the equity.

Nowhere in this memorandum have I discussed the many advantages that would inure to the bankers in this situation. I have thought this was too apparent to make any comment; it is sufficient to say, however, that they would be assured of an immense amount of prime public utility securities each

year that would be purchased from friendly hands, and that their position in the situation would be even more attractive than that of the operators.

Do you recall having written those two paragraphs?

Mr. EMANUEL. I do not.

Mr. NEHEMKIS. It is certainly apparent, however, from the language of those two paragraphs that only a person who knew of this long-range program that you and Captain Loewenstein were planning could possibly have written that statement; is that a fair inference?

Mr. EMANUEL. Perhaps somebody had talked to me, but Captain Loewenstein, as I recall it, was never a part of that program. I probably sent him the letter that you asked me to identify, but he definitely was not interested.

Mr. NEHEMKIS. In other words, as it was set forth in this memorandum from which I have read, and in the memorandum of conversation and agreement between yourself and the late Captain Loewenstein, the public was to really finance this acquisition to the extent of \$137,000,000, and you and your associates would obtain all the advantages which would accrue to the bankers "from purchasing prime securities from friendly hands" was the phrase, and by that I take it at noncompetitive prices. Is that the general gist of the situation?

Mr. EMANUEL. That might have been my idea at the time. As I have to say again, I don't believe I ever received a reply from Captain Loewenstein to that letter I sent him, and I think it was always in my own mind that we would have an equity in the properties. I think I was merely pointing out that if they could be purchased at that price it might be possible to raise most of the money.

Mr. NEHEMKIS. As it says in the statement from which I have previously read, "I," whether that is you or some other person, "agree with Captain Loewenstein that it would be a good policy for us to have some amount of actual cash in the equity."

Mr. EMANUEL. I think that was always the idea. I think, in this letter I read, it said something about that.

Mr. NEHEMKIS. To proceed with this program, Mr. Emanuel, did you not induce the London banking house of J. Henry Schroder & Co., and its American affiliate J. Henry Schroder Banking Corporation, to join hands with you in effecting the program?

Mr. EMANUEL. As I recall it, they had nothing to do with it. I knew that J. Henry Schroder & Co. in London had a relationship with the late Captain Loewenstein.

Mr. NEHEMKIS. Let me see if I understand the record at the present moment. Are you contending that you never had anything further to do with carrying out this understanding that you reached with Loewenstein?

Mr. EMANUEL. As I recall it, he died in July of 1928, and he was succeeded by a man by the name of Fisher and I might have discussed it with Fisher subsequent to that, but I think by the fall of that year, I didn't discuss it any further because, as I recall it, he wasn't interested either.

Mr. NEHEMKIS. You don't recall at this time, Mr. Emanuel, that you spent three or four years of your life in an endeavor to effectuate this program?

Mr. EMANUEL. No; I do not.

Mr. NEHEMKIS. Then we will go along with the evidence and that will recall it to you.

When I say "effectuate the program," I had in mind of course the concentration of activity on Standard Gas, on the acquiring of control of Standard Gas System which was a sizeable operation in itself.

Mr. EMANUEL. Well, after Captain Loewenstein died and Mr. Fisher came in the picture—

Mr. NEHEMKIS (interposing). He was the agent of the late Captain Loewenstein, was he not, at that time?

Mr. EMANUEL. He was an employee of his, and he succeeded him as, I think, managing director of the Hydro Company.

I don't think, in fact I am quite sure, that after the fall of that year, the year of Captain Loewenstein's death, that we never contemplated getting control, as you call it, of Standard Gas & Electric Company.

Mr. NEHEMKIS. You never contemplated obtaining control?

Mr. EMANUEL. That is my best recollection. We did have some securities in the company, a large block of common stock, and I think we did ask for representation and we also asked for the retirement of the million shares of \$1 stock, and we asked that the Philadelphia Company go directly into the Standard Gas & Electric Company. It was divided at that time between Standard Gas and Standard Power. But I don't think we ever asked for control, if you mean by control actually running the system.

Mr. NEHEMKIS. Do you recall at this time that Loewenstein's interests were represented by the Hydro Electric Securities Corporation, a Belgian Corporation domiciled in Canada?

Mr. EMANUEL. I think that is correct.

Mr. NEHEMKIS. And do you recall that that corporation joined you in effectuating the program?

Mr. EMANUEL. Well, again it comes around to what you mean by program. They had a very substantial stock interest in Standard Gas which they had considerably before the time I met Captain Loewenstein, at least I was so informed. And I think my first acquisition of Standard Gas stock personally was in 1927 to '28—'28, I think, the end of that year, and I conferred with Fisher about especially this million shares of preferred stock and the Philadelphia Company, and a few other points we had in mind, and we did cooperate in regard to that.

LEGAL MOVES AGAINST STANDARD POWER & LIGHT CO.

Mr. NEHEMKIS. Do you recall, Mr. Emanuel, at this time planning out the first of a series of tactical moves, legal and otherwise, for acquiring control of the Standard Gas properties?

Mr. EMANUEL. If what you mean by "moves" is a mandamus action we had, and also a demand on the directors; they weren't for the purpose at the time of acquiring control. We had dropped that idea.

Mr. NEHEMKIS. Did you bring the mandamus suit?

Mr. EMANUEL. I don't believe I brought it directly, but the people in my office, I think Mr. Skillman, and a few other stockholders—

Mr. NEHEMKIS (interposing). That you rounded up?

Mr. EMANUEL. I can't remember that far back.

Mr. NEHEMKIS. Did they come to you voluntarily or did you go out and produce them?

Mr. EMANUEL. What I am trying to recall—I am trying to remember whether Hydro was a part of that action or not. I think it was primarily brought by me.

Mr. NEHEMKIS. And what was your purpose in bringing this mandamus proceeding?

Mr. EMANUEL. As I recall it, in order to ascertain some information we didn't have.

Mr. NEHEMKIS. And that was the only way you could get it?

Mr. EMANUEL. It seemed to be the only way at the time.

Mr. NEHEMKIS. Do you recall being instrumental in organizing other legal proceedings?

Mr. EMANUEL. I don't think there was any other, except perhaps a communication to the directors asking for information.

Mr. NEHEMKIS. Mr. Fuller, will you be good enough to take the stand, please.

TESTIMONY OF CARLTON P. FULLER—Resumed

Mr. NEHEMKIS. Mr. Fuller, I show you a document which purports to come from the files of Schroder, Rockefeller & Co., Inc., dated May 16, 1929. Will you tell me whether you recognize this as a true and correct copy of an original in your possession and custody, and be good enough also to glance at the top of this memorandum and tell me whether the initials that appear there are not your initials? I do not intend to examine you on this document. I merely ask that you identify it for the purposes indicated. Are those your initials?

Mr. FULLER. Those are my initials.

Mr. NEHEMKIS. That is a true and correct copy of an original in your possession and custody?

Mr. FULLER. I assume so, I haven't seen the original for a long time.

Mr. NEHEMKIS. Mr. Emanuel, I read to you from this memorandum under date of May 16, 1929, headed "Standard Gas & Electric Company." [Reading from "Exhibit No. 1933"]:

A letter on present status for London:

1.) Our cable No. 361 of April 12th outlined the possibility of litigation in which we did not desire to become involved and their reply No. 183 of April 13th agreed with this attitude and suggested that Harrison Williams and Electric Shareholdings press the attack. No communication with London has taken place since, but the following events have occurred:

2.) G. Reginald Schumann as nominee for Hydro-Electric signed a letter addressed to Standard Gas & Electric in conjunction with other stockholders demanding access to the books. This demand was refused.

3.) Emanuel's next step was to collect proxies for the annual meeting of Standard Gas, which was held May 15th. He procured 217,000 shares which were voted against Byllesby's nominations for directors.

4.) Schumann signed a proxy for Hydro-Electric stock in his name and in favour of Emanuel's men upon cable authorization from Fisher.

5.) Emanuel now asks Schumann as nominee to sign two further letters: a) a letter to Siebert¹ & Riggs, authorizing them to represent the stock in his name in legal proceedings against Standard Gas b) a letter to Standard Gas & Electric Company in complete legal detail demanding access to their books and setting forth the reasons for such demand, presumably to be submitted to the court upon another refusal of the Standard Gas. Fisher has cabled special

¹ So in original.

authorization to Schumann to sign the letter to Siegbert¹ & Riggs under a) above.

Mr. A. Dulles—

That I presume is Mr. Allen Dulles, of Messrs. Sullivan & Cromwell. Do I hear any agreement on that from either of the witnesses?

Mr. FULLER. Yes.

Mr. NEHEMKIS [reading further from "Exhibit No. 1933"]:

Mr. A. Dulles states that there is no possibility of Schrobanco—

Schrobanco being the New York affiliate of J. Henry Schroder of London?

Mr. FULLER. That is the cable address of J. Henry Schroder Banking Corporation which is the New York office of the London house.

Mr. NEHEMKIS [reading further from "Exhibit No. 1933"]:

* * * that there is no possibility of Schrobanco being drawn into these proceedings officially. It is of course possible that in the course of the trial some lawyer might refer to Schumann as employee of Schrobanco, and it is quite probable that our close relations to Fisher and Hydro Electric and Loewenstein will tend to identify us in the public mind with the litigation. Incidentally, Mr. Dulles says that this case, if it comes to trial, will be followed with the closest interest by all lawyers and will doubtless be one of the outstanding cases of the year, since it will make law on this particular subject.

However, Mr. Emanuel, that was not your interest in bringing this series of legal moves, was it?

Mr. EMANUEL. To make law? No.

Mr. NEHEMKIS [reading further from "Exhibit No. 1933"]:

Emanuel has sent Fisher rather complete details which London might ask Fisher to show them.

I offer in evidence the document identified by Mr. Fuller from which I have been reading.

Acting Chairman WILLIAMS. It may be received.

(The memorandum referred to was marked "Exhibit No. 1933" and is included in the appendix on p. 12870.)

Mr. NEHEMKIS. Mr. Emanuel, do you now wish to change your testimony, or has your recollection been refreshed? Were you not at that time planning a series of legal moves? Were you not actively engaged in a series of tactics to obtain control of the Standard Gas System?

Mr. EMANUEL. I was not. I was trying to obtain information.

Mr. HENDERSON. Trying to obtain information for information's own sweet sake?

Mr. EMANUEL. No; we wanted to get representation on the board, not control, and we wanted to get the 1,000,000 shares of \$1 preferred stock retired. We wanted to get the Philadelphia Company back entirely in Standard Gas & Electric Company, as I recall it now.

Mr. HENDERSON. Who had control at this time?

Mr. EMANUEL. Well, I don't think anyone had 51 percent, but the practical control we construed to be in the hands at that particular time of H. M. Byllesby and Company.

Mr. HENDERSON. In order to achieve what you wanted, you had to supersede the existing nominal control, did you not?

Mr. EMANUEL. No; not necessarily. What we wanted to do was to get them to agree to these things.

Mr. HENDERSON. You are making some kind of a distinction on "control" in your own mind; is that it?

¹ So in original.

Mr. EMANUEL. Yes, sir. By control I mean where you actually control the company; you have the power of initiation in its management; you really run it.

Mr. NEHEMKIS. Was not the purpose of these series of legal moves and other moves really to change positions with Byllesby, remove them from their then position in relation to the affairs of the company?

Mr. EMANUEL. No; I don't think it was.

Mr. NEHEMKIS. Mr. Fuller, will you be good enough to examine a cable from the J. Henry Schroder Banking Corporation, dated October 15, 1928, and tell me whether you recognize this as a true copy of an original in your possession. For the sake of the record this is a cable sent to London, J. Henry Schroder & Co. I do not intend to examine you, sir, on the contents of that document. You are being asked to identify it.

Mr. FULLER. That seems to be a photostat of a cable.

Mr. NEHEMKIS. I read from the cable identified by the witness, dated October 15, 1928. Cable from Schrobanco to Schrodpriv—that is the cable address of the London house, Schrodpriv. [reading from "Exhibit No. 1934"]:

Emanuel is seeing O'Brien again next week and proposes to alter his tactics telling him we have increased our holdings and have intention of further increasing (stop)

Also that we are not anxious to buy his preferred stock as we doubt validity and fear public enquiry (stop)

In view of O'Brien's fears, Emanuel feels we can obtain representation on board and interest in finance as large shareholders and have such a nuisance value as critics of all Byllesby operations as to make preferred stock of little value to them (stop)

Plan is to force O'Brien to join Emanuel and ourselves in all financial operations of Standard Gas and between us gradually obtain real control of common stock instead of trick control as now held by Byllesby (stop)

Mr. Emanuel, do you recall what you had in mind by the reference to the phrase "trick control"?

Mr. EMANUEL. I suppose I meant unusual control due to the fact that one million shares had one voted share with a par value of only one dollar.

Mr. NEHEMKIS. Do you have in mind that this is an unusual means of control, for one dollar of preferred stock to exercise as against the equity interest? Is that what you had in mind?

Mr. EMANUEL. I think that is right, sir.

Mr. NEHEMKIS. Continuing with the cable from Schrobanco to Schrodpriv. [Reading further from "Exhibit No. 1934"]:

If O'Brien inclined to cooperate on these lines corporation would be formed along lines described in my notes mailed to Baron into which Emanuel and Hydro would place all their Standard Gas common and O'Brien would place his preferred stock and some Byllesby stock in exchange for common stock of corporation for amounts to be agreed (stop)

The Baron referred to there, Mr. Emanuel, is Baron Schroder, of London?

Mr. EMANUEL. I did not write that, but I presume that is who it means.

Mr. NEHEMKIS. Do you recall who the Baron was?

Mr. FULLER. I assume so.

Mr. NEHEMKIS. Head of the London house?

Mr. FULLER. Head of the London firm.

Mr. HENDERSON. Is he still alive?

Mr. FULLER. Yes.

Mr. HENDERSON. Where is he located now?

Mr. FULLER. London; he always has been in London in his business control.

Mr. NEHEMKIS [reading further from "Exhibit No. 1934"]:

This corporation would proceed to acquire real control and finance its operations by means of bank borrowing followed by issues of stock and bonds STOP

Next steps contemplate very important mergers of companies known to Fisher STOP

Mr. Emanuel, were there not at this time taking place a series of steps, moves, and plans, all parts of a carefully formulated design for ousting Byllesby from its position in the Standard Gas system, and substituting in place thereof the interests represented by the late Captain Alfred Loewenstein and the interest represented by Mr. Victor Emanuel?

Mr. EMANUEL. I can't recall that that is the case; no. I don't think that I had in mind, as near as I can recall it, ousting Byllesby.

Mr. NEHEMKIS. Did this cable sent by Schroder Banking Corporation, which has been identified by witness Fuller, to Schrodpriv in London, misrepresent your notions at the time it was sent, namely, October 15, 1938?

Mr. EMANUEL. I don't think it entirely reflected my notions, if you mean by that that I was in favor of ousting Byllesby from Standard Gas. I was in favor of getting just what I testified before.

Mr. NEHEMKIS. The document will speak for itself, may it please the committee.

Acting Chairman WILLIAMS. The exhibit may be received.

(The cable referred to was marked "Exhibit No. 1934" and is included in the appendix on p. 12871.)

Mr. HENDERSON. I wanted to ask a direct question. One clause of the telegram says, "This corporation would proceed to acquire real control."

Mr. EMANUEL. I meant by that control through the regular common stock, and not through the one dollar preferred stock.

Mr. HENDERSON. Then you did have some idea of acquiring real control?

Mr. EMANUEL. Well, evidently what that cable tried to express—it has been many years ago, and I can't recall everything that happened then—was an idea to put into a new company these securities held by Loewenstein and myself and my associate, and have control of the company evidenced through its regular common stock, and not through the \$1 preferred stock.

Mr. HENDERSON. But who would have that real control?

Mr. EMANUEL. What was the date of that?

Mr. NEHEMKIS. October 15, 1928.

Mr. EMANUEL. I think that in my own mind was that the corporation would but Byllesby would continue operating the properties.

Mr. HENDERSON. But the real control on an equity basis would lodge with your group, would it not, assuming you got this group together?

Mr. EMANUEL. That I can't say, because it all depended on how much common stock Byllesby would receive in the new corporation for their new securities and if they wanted to buy any more or not.

Mr. NEHEMKIS. Before proceeding so the record may be clear, is that now in evidence?

Acting Chairman WILLIAMS. It may be admitted.

Mr. NEHEMKIS. The document is signed by Frank, Mr. Fuller; that is Mr. Frank Common, president of Hydroelectric?

Mr. FULLER. My recollection is Mr. Frank Tiarks, a partner in our London firm, who was probably here at that time.

Mr. NEHEMKIS. You said a moment ago that Baron Schroder was head of the London house. Does the London house of J. Henry Schroder have other banking connections on the Continent?

Mr. FULLER. No.

Mr. NEHEMKIS. Does it have any in Germany?

Mr. FULLER. No.

Mr. NEHEMKIS. Does the Baron spend part of his time in Germany, Munich?

Mr. FULLER. No; except for vacation.

Mr. NEHEMKIS. For the sake of identifying the figure, is that the same Baron Schroder whose name appeared in the press some time ago in connection with activities in Germany?

Mr. FULLER. No; not that I know of.

Mr. NEHEMKIS. Not the same Baron Schroder?

Mr. FULLER. No. The Schroder family in Germany, and, of course, the Schroder family in England has many relatives there, but the English firm has been in England since 1804 and have never had any branch in Germany that I know of.

Mr. NEHEMKIS. I was wondering—this is Baron Bruno Schroder?

Mr. FULLER. That is right.

Mr. NEHEMKIS. Isn't it Baron Bruno Schroder who was the man instrumental in introducing Chancellor Hitler to the industrialists in Germany?

Mr. FULLER. No; he is not. I believe he is a member of the family but certainly not a member of the firm in London, and had no connection with them.

Mr. NEHEMKIS. I was anxious to see if we had the same people here.

Mr. Fuller, I show you a copy of a cable from Fisher to Loewenstol—I presume that is a cable name—Brussels——

Mr. FULLER (interposing). As I recall.

Mr. NEHEMKIS. As of October 19, 1929, and which purports to bear your initials in the upper right corner. Will you be good enough to tell me whether or not this is a true copy of an original in your possession and custody and whether or not in fact those are your initials?

Mr. FULLER. It seems to me to be a true copy.

Mr. NEHEMKIS. Were not the international and domestic banking forces marshalled against Byllesby too great, Mr. Emanuel, and did not Byllesby finally capitulate to you and your associates?

Mr. EMANUEL. The only international, so-called international, firm that had any stock interest in this was Hydro, as far as I knew.

Mr. NEHEMKIS. A Belgian corporation domiciled in Canada?

Mr. EMANUEL. That is right, domiciled in Canada. I think what eventuated was that some time in 1929—I can't just offhand fix the date, but it was after this mandamus proceeding which hadn't come up to any court hearing, and after the demand on the directors for access to the books and records had been refused, that as I recall it, a Mr. Gray, I think it was, a firm called Ward and Gray, Wilmington, who I believe were counsel for Standard Gas in Wilmington, talked to Mr. Riggs, who was my attorney, and suggested that we have a meeting about this matter and that eventually resulted in the reorganization of Standard Gas and Standard Power in early 1930.

GENERAL SETTLEMENT BETWEEN USEPCO AND STANDARD POWER & LIGHT CO.—RESUMED

Mr. NEHEMKIS. Do you recall whether as a result of the series of events which have been described in documents offered in evidence that Byllesby agreed to give you and your associates 50-percent control of the Standard Gas system?

Mr. EMANUEL. What happened was that it was sort of a complicated transaction. The group I represented got a minority of the directors of Standard Gas and a majority of the directors of Standard Power. However, the majority of directors of Standard Gas, of course, had a majority of that company and the Byllesby Engineering & Management Corporation, as it was then called, continued to operate the properties and have all power of initiative concerning their management. We had certain veto powers as to certain major actions that could not be done without the consent of three-quarters in number of the board of directors of Standard Gas & Electric Co. Those matters involved principal items like buying or selling properties or mergers or consolidations, reorganizations, and things of that nature. Also, as a result of that, \$1,000,000 of preferred stock was retired, and the Philadelphia Co. went entirely into the Standard Gas & Electric Co.

Mr. NEHEMKIS. Mr. Fuller, you said that Loewenstol was probably a cable name. Is that a cable name for certain directors who were part of the European group?

Mr. FULLER. Does it give a city?

Mr. NEHEMKIS. Yes, Brussels.

Mr. FULLER. I assume that was Hydro, Brussels office.

Mr. NEHEMKIS. Mr. Emanuel, I should like to call your attention to the following, which is a cable from Fisher, then representing the Loewenstein interests, to some of the Belgian directors of Hydro-Electric, as follows [Reading from "Exhibit No. 1935"]:

Subject to our counsel and Byllesby's counsel coming to terms between them upon language of series of written agreements embodying undermentioned settlement we have settled with Stand Gas board after long and exhaustive negotiations on following conditions: Firstly Byllesby surrender their own million preferred for cancellation. Secondly Stand Gas board equally divided our group appoints chairman company and chairman finance committee Byllesby keep presidency.

Continuing the cable,

Will explain to you on my return by what series of transactions this new company becomes possessed of half all Stand Gas common outstanding. It will therefore own control Stand Gas. * * *

This gives us full power protect our investment and means our cooperation necessary for everything material.

My associate calls my attention to one other provision that I should read to you, Mr. Emanuel:

Sixthly, our group receives 75 percent of banking which means issuance new securities to provide for annual growth parent company and subsidiaries totaling thirty to sixty million dollars. Seventhly, when steps to accomplish above completed we withdraw our legal action (stop) Emanuel has borne largest share work and deserves great credit. Please communicate above confidentially Fabri Baron Schroeder.

Mr. Emanuel, as a result of this series of operations which had been formulated and planned by you and your associates in cooperation with the international banking firm of J. Henry Schroder & Co., and the domestic forces that had been marshalled and against Byllesby, it is fair to recapitulate, is it not, that Byllesby completely capitulated to you and your associates that Byllesby agreed to give you and your associates 50 percent control over the Standard Gas System, in fact, the battle had been won?

Mr. EMANUEL. Well, we carried our main point about the retirement of the million shares of preferred stock and the putting of Philadelphia Company into Standard Gas and had gotten representation on the board, which we thought our interests deserved. However, I didn't send that cablegram. We never got the chairmanship of Standard Gas or any office of Standard Gas. We had a minority representation on the board, and as I explained, due to the bylaws of Standard Gas, or charter, I don't know which it was, I suppose the charter, on certain major things it took three-quarters of the board to agree before that could be done. It was more in the nature of a right to pass on those major things. We had no power of initiation whatsoever.

Mr. NEHEMKIS. Now, as part of the settlement reached from the Byllesby capitulation to you and your associates, did not you and your associates obtain an agreement from Byllesby to enjoy 75 percent of all future Standard Gas System financing?

Mr. EMANUEL. As I recall that agreement, it was an agreement between United States Electric Power and Byllesby, and Byllesby, as I recall it, had 25 percent of the banking, and United States Electric had the right to nominate, I presume you would call it, where the other 75 percent of the banking would go.

Mr. NEHEMKIS. Mr. Chairman, so that the record may be complete. I will offer in evidence at this time the cable previously identified by witness Fuller.

Acting Chairman WILLIAMS. This will be received.

(The cable referred to was marked "Exhibit No. 1935" and is included in appendix on p. 12872.)

Mr. NEHEMKIS. Did not the J. Henry Schroder Banking Corporation of New York attempt to obtain a share in this 75 percent division, Mr. Emanuel, do you recall?

Mr. EMANUEL. I don't recall exactly. I think they had a small interest in subsequent financing, I don't recall that it was very major.

Mr. NEHEMKIS. Do you recall whether other members of the American group were somewhat reluctant to cede to Schrobancro an interest in this 75-percent division?

Mr. EMANUEL. I don't recall that.

Mr. NEHEMKIS. Do you recall whether or not at this time it was not thought desirable to have as a director of United States Electric Power Baron Bruno Schroder, the senior partner of the London house?

Mr. EMANUEL. I remember he went on the board when the company was formed, or shortly after.

Mr. NEHEMKIS. He did consent to serve as a director, did he not?

Mr. EMANUEL. I think he did; yes.

Mr. NEHEMKIS. But in so consenting to serve as a director, didn't he make a rather important proviso, do you recall?

Mr. EMANUEL. I don't recall, no; I don't think I had any communications with him about it.

Mr. NEHEMKIS. But you, of course, were intimately familiar with all of the details and arrangements at the time, being one of the moving spirits?

Mr. EMANUEL. Well, I of course had intimate knowledge of the situation, but I think as regards Mr. Fisher's interests in it, he handled that himself; I think he was over here, as I recall it.

Mr. NEHEMKIS. Do you recall that Baron Bruno Schroder provided that he would accept a directorship on the condition that a fair position in the future banking business would result for the London firm's New York branch, Schrobanco?

Mr. EMANUEL. No; I don't recall that.

Mr. NEHEMKIS. Mr. Fuller, what is your recollection on the question I asked Mr. Emanuel?

Mr. FULLER. It is quite clear in my mind that he did make that proviso and that that was subsequent to efforts of Schroder New York to get a participation here which has not been granted as originally planned. Since we had no financial interest in it at any time, and it is my recollection that one of the provisos made on giving us any representation was that Baron Schroder should go on the board and our counter suggestion was that if he did, which was not his custom, then naturally his interest should be well recognized in a future profitable financing that came along.

Mr. NEHEMKIS. I show you four documents, cables, from Schrobance to Schroderpriv or from Schroderpriv to Schrobanco. Will you be good enough to tell me whether you recognize these as documents coming from your files and in some instances bearing your initials?

Mr. HENDERSON. While we are waiting on that, did Loewenstein have any interest in Sofina?

Mr. EMANUEL. At one time I think he controlled it. I can't say exactly; I think he did. He had a large interest in the Barcelona Traction Light & Power Co. which he developed.

Mr. HENDERSON. Did Schroder have any interest in Sofina?

Mr. EMANUEL. I don't know.

Mr. HENDERSON. Do you know, Mr. Fuller?

Mr. FULLER. No; they never did.

Those seem to be documents from our file.

Mr. EMANUEL. I think, Mr. Henderson, that Loewenstein had had some interest in Sofina, but I don't think he ran it.

Mr. NEHEMKIS. The four documents identified by the witness are offered in evidence, may it please the committee.

(The cablegrams referred to were marked "Exhibits Nos. 1936 to 1939" and are included in the appendix on pp. 12872-12873.)

Mr. NEHEMKIS. As part of the deal which resulted from Byllesby's capitulation to your interests, did you not then buy up Ladenburg, Thalmann's interest in Standard Power for \$25,000,000 and 266,666 shares of United States Electric Power Co.?

Mr. EMANUEL. As a result of the agreement with Byllesby, I think it was during the time it was being negotiated, we found for the first time about Ladenburg, Thalmann's large interest in Standard Power and the agreement they had on that, and that resulted in United States Electric buying their stock for the consideration you mentioned.

Mr. NEHEMKIS. Then you paid \$10,000,000 in cash and the balance in notes, did you not?

Mr. EMANUEL. As I recall, that is correct.

Mr. NEHEMKIS. Now, the deal was finally consummated on or about December 21, 1929, was it not?

Mr. EMANUEL. I think we came to an agreement on that date.

Mr. NEHEMKIS. And about that time you became president of Standard Power, the top holding company of the Standard Gas System, did you not, sir?

Mr. EMANUEL. I think I became president when the company was reorganized on January 7, 1930, when the stockholders' meeting occurred, if not then right afterwards.

SECURITY ISSUES PURSUANT TO BANKING MEMORANDUM OF
DECEMBER, 1929

Mr. NEHEMKIS. Mr. Chairman, I should like to offer in evidence at this time a table which shows the securities sold to the public by Standard Gas and Electric Company or any of the corporations in its system from the period January 7, 1930, to June 1, 1936, and the percentages of participations therein by the various banking firms, arranged as per the terms of the Banking Memorandum between Byllesby and the United States Electric Power Corporation and Ladenburg, Thalmann & Co. December 21, '29. You will recall we have had evidence on that in "Exhibit No. 1931." Together with this table are three supplementary tables identified here again as supplementary exhibits A, B, and C.

(The tables referred to were marked "Exhibits Nos. 1940-1 to 1940-4" and are included in the appendix facing p. 12874 and on pp. 12874 and 12875.)

Mr. NEHEMKIS. For your information, sir, I state that the data appearing on these tables were furnished to the Securities and Exchange Commission and appear in the Commission's Docket No. 31-379 and Docket 31-420, also, and these are Exhibit No. 20 and Exhibit No. 21 in those dockets. I think that it would be advisable, if I may suggest, sir, that these two documents be placed on file with the committee, and that the table which I now offer to you be spread on the records of the committee.

Acting Chairman WILLIAMS. That may be done, these are submitted for filing.

(The documents referred to were marked "Exhibits Nos. 1941 and 1942" and are on file with the committee.)

Acting Chairman WILLIAMS. Is this a convenient place to adjourn?

Mr. NEHEMKIS. Excellent.

Acting Chairman WILLIAMS. The committee will stand in recess until 2:30.

(Whereupon, at 12:30 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The committee resumed at 2:35 p. m. on the expiration of the recess.

Acting Chairman WILLIAMS. The committee will be in order, please.

Mr. NEHEMKIS. Mr. Emanuel and Mr. Fuller, will you be good enough to return to the witness stand, please?

TESTIMONY OF VICTOR EMANUEL AND CARLTON P. FULLER—

Resumed

Mr. NEHEMKIS. The committee will recall that before our recess I offered in evidence committee "Exhibit No. 1940," which showed the financing for the Standard Gas system for the period 1929 through 1936. This exhibit shows that all of this financing which was undertaken during this period complied exactly with the terms of the Banking Memorandum.

Thus, for example, in the financing covered under group A of the table in evidence the distribution was precisely as called for on page 1 of the Banking Memorandum, and in the case of group B on the table the distribution of the participations to the investment banking firms was precisely pursuant to paragraph 3 on pages 2 and 3 of the Banking Memorandum.

In the case of the distribution of participations under group C on the table before you those participations were pursuant to paragraph 4 on page 3 of the Banking Memorandum, with further development of those participations appearing to the supplementary exhibit A, and so on.

Mr. Fuller, as Mr. Emanuel's earlier testimony shows, Ladenburg, Thalmann's interest in Standard Gas was bought out by United States Electric Power for \$25,000,000. You recall that testimony; do you not?

Mr. FULLER. Yes.

\$15,000,000 LOAN TO USEPCO SECURED BY STANDARD POWER & LIGHT CO.
STOCK—EFFORTS TO REGAIN COLLATERAL

Mr. NEHEMKIS. And do you not also recall the transaction which involved that exchange of cash and securities?

Mr. FULLER. No; I was not familiar with it in any detail at the time, since Schroder Banking Corporation had nothing to do with it.

Mr. NEHEMKIS. You know only of it then—

Mr. FULLER (interposing). By hearsay.

Mr. NEHEMKIS. Do you recall that to raise this sum some \$15,000,000 had to be borrowed from the Chase, the Guaranty, and Chemical?

Mr. FULLER. I recall at a later date I realized that fact, yes.

Mr. NEHEMKIS. And that this loan was secured by Standard Power stock?

Mr. FULLER. Eventually; yes.

Mr. NEHEMKIS. Do you recall, Mr. Emanuel, that ultimately this loan was reduced to about \$12,500,000 in 1934?

Mr. EMANUEL. I think that is probably right.

Mr. NEHEMKIS. And do you recall, Mr. Emanuel, that United States Electric Power had defaulted on its interest to the banks?

Mr. EMANUEL. That is right.

Mr. NEHEMKIS. And that the banks thereafter increased their collateral by taking over all of the assets of, may I say Usepco in order to avoid that long name?

Mr. EMANUEL. That is right.

Mr. NEHEMKIS. This meant, in effect, did it not, that the control had passed under the pledge to the banks?

Mr. EMANUEL. Well—

Mr. NEHEMKIS (interposing). Potential control, at least.

Mr. EMANUEL. Yes; they had all the collateral.

Mr. NEHEMKIS. In 1934 did you, Mr. Fuller, not recognize about the only worthwhile thing left in Usepco was the future Standard Gas financing?

Mr. FULLER. I don't recall my state of mind at the time, but I should think probably the figures would have shown that the current value of its holdings was not very large.

Mr. NEHEMKIS. I show you a memorandum bearing your initials dated August 10, 1934, entitled "General Evaluation of Future Prospects of Standard Gas & Electric Corporation." Will you be good enough to examine this document and tell me whether or not it was prepared by yourself and whether those initials are yours?

Mr. FULLER. Yes; this memorandum consists of a list of favorable points as to the future prospects of Standard Gas & Electric Corporation, and also unfavorable points, there being five favorable and eleven unfavorable. I don't know just how they would be evaluated as to rating.

Mr. NEHEMKIS. And among the favorable points that you enumerated at this point [reading]:

There is considerable financing in the system to be counted upon and hitherto U. S. Electric has had a small participation in the profits of such issues.

Mr. Chairman, I offer in evidence the document identified by Mr. Fuller.

Acting Chairman WILLIAMS. This may be received.

(The document referred to was marked "Exhibit No. 1943" and is included in the appendix on p. 12875.)

Mr. NEHEMKIS. Did not the banks begin looking around to find a market for the stocks pledged to them?

Mr. FULLER. I am not familiar with the situation. We were not in close contact with United States Electric, in spite of membership on the board. Those negotiations were handled by Mr. Fisher.

Mr. NEHEMKIS. Is it not a fact, Mr. Emanuel, that about this time the banks to whom the stock had been pledged began looking around for a purchaser or market to dispose of their holdings?

Mr. EMANUEL. What time was that?

Mr. NEHEMKIS. 1934.

Mr. EMANUEL. I think that is true. I mean they wanted to get paid.

Mr. NEHEMKIS. That is right. And do you recall some negotiations with Harrison Williams, of the North American Power &

Light, in regard to acquiring that pledged collateral? I am addressing my question to you, sir.

Mr. EMANUEL. I had one conference with Mr. Williams about that matter. I think that is all I had, and he was talking about one of the banks' having told him they were reducing these notes in their possession.

Mr. NEHEMKIS. Mr. Fuller, I show you a document which purports to come from the files of your company. Will you examine it and tell me whether you recognize it as a true and correct copy of an original in your possession and custody?

Mr. FULLER. It would seem to be.

Mr. NEHEMKIS. And this is a copy of a cablegram from Brussels to—I assume that is a code name—Alemanuel.

Mr. EMANUEL. That is the code name of Albert Emanuel & Co.

Mr. NEHEMKIS. And it is signed by Vanderstraten, and his cable address is Canabelge, and Vanderstraten is a director or was a director of Hydro-Electric, do you recall?

Mr. EMANUEL. I think he was.

Mr. NEHEMKIS. One of the Belgian directors.

Mr. EMANUEL. That is right.

Mr. NEHEMKIS. This cable reads as follows [reading from "Exhibit No. 1944"]:

Hydro Committee surprised learn Chasebank negotiating with group Harrison Williams cession securities pledge by Usepco feeling that Chasebank appeared disposed accept our proposals about which other banks had to be approached (stop) What is present position (stop) We suppose Chasebank could not conclude deal with Harrison Williams without Usepco's renunciation assets pledged or protracted formalities (stop) Usepco under no circumstances must give such renunciation but should endeavor obtain consent Chasebank that our negotiations be postponed for few weeks until Fisher's recovery (stop)

I offer in evidence, Mr. Chairman, the document identified by the witness.

The CHAIRMAN. This may be received.

(The cable referred to was marked "Exhibit No. 1944" and is included in the appendix on p. 12876.)

Mr. NEHEMKIS. Now, that came over on the code name of your firm. You recall that particular cable, do you?

Mr. EMANUEL. No; it has been years since I received that. I have no doubt it is correct.

Mr. NEHEMKIS. In accordance with the discussions that were taking place between New York and London and Brussels at this time, you did all you could, did you not, Mr. Emanuel, to delay any deal of the banks with Harrison Williams?

Mr. EMANUEL. I was engaged for three or four years, I suppose, I can't remember exactly the period, in trying to do everything I could to save that company, and we were working during that whole period on trying to make a compromise of our position with the banks who held our notes. Naturally, I did everything I could.

Mr. NEHEMKIS. The thing you were really trying to save, of course, was the collateral, not the company.

Mr. EMANUEL. That is—well, we were trying to save the company.

Mr. NEHEMKIS. Well, the company without the collateral was a meaningless shell, was it not?

Mr. EMANUEL. That is right, but what we were trying to do was to work out some compromise with the banks whereby the principal

stockholders of the company could redeem that collateral and keep it in the company.

Mr. NEHEMKIS. The point at issue, at stake at this particular time, was who would get possession or be able to regain possession of the collateral pledged to the banks. Now, the thing you had to get hold of, if this system was going to mean anything to you, was the pledged collateral, is that correct, sir?

Mr. EMANUEL. No; I couldn't answer that question that way. I was president of U. S. Electric Power, and as such I was trying to keep the company alive for the benefit of its stockholders. The banks held this collateral and their notes were under water. For a period of three or four years I and some of the other principal stockholders of this company, a good many of us, tried repeatedly, time after time to make a deal with the banks whereby we could compromise these loans, because obviously they were under water. I don't know if that is exactly in answer to your question, but that was the situation.

Mr. NEHEMKIS. And in connection with these negotiations that were taking place over this period of time, you were doing everything conceivable to protect your interests, to delay any sale of the pledged collateral by the banks to Harrison Williams, or anyone else?

Mr. EMANUEL. Correct.

Mr. NEHEMKIS. Mr. Fuller, I show you a document, a cable, purporting to come from the files of Schroder Rockefeller & Co., and ask you to tell me whether or not this is a true and correct copy, and whether this doesn't bear your initials on the right-hand top corner.

Mr. FULLER. I presume that is the case, although I didn't sign the initials.

Mr. NEHEMKIS. The document is offered in evidence.

Acting Chairman WILLIAMS. It will be received.

(The cable referred to was marked "Exhibit No. 1945" and is included in the appendix on p. 12876.)

Mr. NEHEMKIS. Now, Mr. Emanuel, why was it important for you to gain possession of the pledged collateral and to avoid, if possible, any disposal of this pledged collateral to Harrison Williams or any other group?

Mr. EMANUEL. Well, if it hadn't been avoided the U. S. Electric Power stockholders would have all been wiped out.

Mr. NEHEMKIS. And what would have happened to Victor Emanuel and his interests if Harrison Williams or any other group got this pledged collateral? Victor Emanuel and his interests would have been completely wiped out, wouldn't they?

Mr. EMANUEL. That is correct.

Mr. NEHEMKIS. Therefore, it was to your interest, was it not, and the European interests who were counting on you, to see that that pledged collateral remained intact until you could buy it on your terms, is that correct?

Mr. EMANUEL. It was to be our interest to see that the collateral wasn't sold to anybody else or anybody except the U. S. Electric Co.; that was at that time, 1934, what we were trying to do.

Mr. NEHEMKIS. And as you and I said we might refer to it, that Usepco was merely a shell without that pledged collateral; that company was nothing but a fiction without the pledged collateral behind

it. With it, it meant you and your interests and the European interests had control over the utility empire, is that correct?

Mr. EMANUEL. No; that isn't.

Mr. NEHEMKIS. In what particulars do I misinterpret the situation?

Mr. EMANUEL. I think you asked me two or three questions in that one question. I will have to take them up by sections.

Mr. NEHEMKIS. Please.

Mr. EMANUEL. In the first place had that collateral been sold by the banks to outsiders or to anybody but U. S. Electric, U. S. Electric would have been entirely without assets and busted. Secondly, during that entire period from 1934, and I think most of 1935, a group of U. S. Electric principal stockholders were trying to come to an agreement with the banks. I can't tell you now how many conferences we had; they perhaps were monthly. We had plan after plan, time after time; we thought we had a plan that the banks would accept; they all fell through. It wasn't to keep me, though, from having control of the utility empire because, whether U. S. Electric was saved or not, we didn't control Standard Gas. We did have the power, as I previously testified, in Standard Gas to sort of veto, if you will, certain policies of the company or certain things like the purchase or sale of properties, and that sort of thing, within the agreement. I think you have the record of it.

Mr. NEHEMKIS. Mr. Fuller, Schrobanco at this time was not very enthusiastic about blocking Harrison Williams. As a matter of fact, it was trying to work out a plan of its own with Williams and Byllesby, wasn't it?

Mr. FULLER. I don't recall the circumstances offhand. Of course we had other business relationships with Harrison Williams. I imagine we weren't particularly interested in blocking any plans of his in other connections, but I couldn't recall what you have in mind at the time. We had many conferences with him about many different things.

Mr. NEHEMKIS. I show you a cable from Schrobanco to Schroder, London, dated September 21, 1936, and purporting to bear your initials. Will you examine this and tell me——

Mr. FULLER (interposing). You are now talking about 1936, having just been talking about 1934.

Mr. NEHEMKIS. I beg your pardon, it is 1934. Will you tell me whether you recognize this as a copy coming from your files?

Mr. Fuller, does that document now refresh your recollection?

Mr. FULLER. Yes; I recall now.

Mr. NEHEMKIS. What is your recollection at this time of whether or not Schrobanco was or was not interested in blocking Harrison Williams?

Mr. FULLER. Schrobanco at that time had no interest any more than it ever had in Usepco itself, and it wasn't even close to the internal operations of it, and Schrobanco was naturally interested in getting any business it could and having good business relationship with Harrison Williams, would naturally not want to imperil good relationships with rather tenuous relationships. Therefore, I assume that this cable discusses one of the numerous plans that Mr.

Emanuel has mentioned about rescuing the collateral from the banks. I don't recall the details of it more than given in that cable.

Mr. NEHEMKIS. Did I understand you to say a moment ago that you had no particular interest in the Standard Gas matter?

Mr. FULLER. No; I didn't say that; I said Schroder Banking Corporation never had any financial interest in Usepco.

Mr. NEHEMKIS. How does it happen that all these documents that I have been offering in evidence come from the files of Schroder Rockefeller & Co., Inc.?

Mr. FULLER. That is quite a story in itself, but you must realize that we were acting as bankers in New York for Hydro interests so far as we could, that our London house was their chief London banker, and in most of these matters we were acting for a London house and trying hard to act more closely for Hydro, although at this period we were not very close to them.

Mr. NEHEMKIS. You were perhaps a conduit for these various interest, say a clearing house.

Mr. FULLER. I think that is a good expression.

Mr. HENDERSON. As far as control over Usepco was concerned, however, your company and Mr. Emanuel's company still really had that while the stock was pledged, did you not?

Mr. FULLER. Perhaps it isn't clear in your mind, Mr. Henderson, that our company, meaning the Schroders, had never had any financial interest in the U. S. Electric Power Company, and we have never had any financial interest in Hydro, either. That is not a Schroder company.

Mr. HENDERSON. Weren't you acting, however, as their conduit?

Mr. FULLER. That is correct.

Mr. HENDERSON. I am saying, assuming that you represented the Hydro interest—

Mr. FULLER (interposing). Which is a rather far-fetched assumption at this period, but, assuming we did, your question is?

Mr. HENDERSON. And taken together, the two interests, yours and Mr. Emanuel's, were a majority, were they not?

Mr. FULLER. Well, it depends there, I suppose, where you put the United Founders interest, and I couldn't tell offhand just where the control lay. I wouldn't think it did.

Mr. NEHEMKIS. Mr. Emanuel, at this time the financing, the right to do the financing still resided in that original document.¹ That had not passed until Chase would reduce the stock to possession?

Mr. EMANUEL. That agreement was still in effect as much as it ever could be in effect.

Mr. FULLER. And I might add that Schroder Banking Corporation was not a party to that agreement at any time.

Mr. EMANUEL. You asked about control of the United States Electric. Of course, all this collateral was deposited with the banks at that time, they had first call on it, but the largest stockholders of United States Electric were still the same as what it had been when the company was formed which was the United American Founders group, so-called, and the Hydro Electric Securities Corporation. At all times, as I recall it, they had a majority of the stock of the United States Electric.

¹ Referring to "Exhibit No. 1931."

Mr. HENDERSON. Was there any financing during this period in '34 and '35?

Mr. EMANUEL. I can't recall offhand, Mr. Henderson. As I remember it, markets weren't very good during that particular period.

Mr. NEHEMKIS. The previous exhibit¹ showed the sale or volume of financing during the period from '30 through '36 pursuant to the agreement.

Mr. EMANUEL. I thought you were asking about '34.

Mr. HENDERSON. I was.

Mr. EMANUEL. I don't recall offhand.

Mr. NEHEMKIS. Mr. Chairman, may I at this time offer in evidence the document previously identified by Mr. Fuller.

(The cable referred to was marked "Exhibit No. 1946" and is included in the appendix, p. 12877.)

Mr. NEHEMKIS. Mr. Fuller, for purposes of offering it for the record, will you identify for me the two documents I now hand you? I do not intend to examine you, Mr. Fuller, on those documents. Merely tell me, if you will, if they come from your files, and if they are true and correct copies.

Mr. FULLER. I should think so.

Mr. NEHEMKIS. The two documents identified by the witness are offered in evidence.

(The documents referred to were marked "Exhibits Nos. 1947 and 1948" and are included in the appendix on p. 12878.)

Mr. NEHEMKIS. The pledged collateral more or less went to sleep for a period of time, nothing could be done until about '35, when the next suggestion for recapturing the pledged collateral was advanced by you, Mr. Emanuel. Is that not so, as you recall the situation?

Mr. EMANUEL. During this entire period, constantly we were working on these bank loans, because the situation was always highly dangerous. Of course, the loans were undercollateralized, and, as I say, I can't recall offhand how many different plans we had to redeem it, but it was constantly on the fire.

Mr. NEHEMKIS. And at that time you did organize a group to buy the Usepco notes, did you not?

Mr. EMANUEL. I think that was in '36, wasn't it?

Mr. NEHEMKIS. Substantially, the end of '35 or early '36; I guess it was the end of '35.

Mr. EMANUEL. What had happened was that Mr. Fisher, who had succeeded Captain Loewenstein at the Hydro Company, was ill himself, and he did come over here I think once or twice while he was ill, and he was hoping not seriously. It developed, however, that he had cancer. During that same period, also in 1935, the Founders group companies had disposed of their United States Electric stock by declaring it out to their stockholders, so they wouldn't come under the Public Utility Act, and always in the plans heretofore, the Founders group of companies had always been willing to make their fair contribution of capital to save the United States Electric Co. So had Mr. Fisher, as far as he could. I think they both felt a high degree of responsibility, akin to my own, to do everything to save the company. When the Founders group disposed of their stock by declaring it out to the stockholders, Mr. Fisher became seriously ill, and

¹ Referring to "Exhibit No. 1940."

during this period sometime, we sent, well, I think Mr. Granbery went over twice to see him, he had some free time, and I think Mr. Seagrave went over once, also. Always we were on the verge of settling with the banks. One time Mr. Fisher, when he was here, had a plan of his own which he thought the banks would approve, and when we lost the support, you might say, of the Founders group, they no longer were stockholders, Fisher was very ill, then we had to formulate new plans to try and save the company if we could. And I think that those came to a head in '36, as I recall it. I can't remember the exact date.

Mr. NEHEMKIS. Mr. Fuller, who is Robin Wilson?

Mr. FULLER. He is associated with Schroder, in London.

Mr. NEHEMKIS. Connected with the banking house?

Mr. FULLER. Of J. Henry Schroder & Co., London; yes.

Mr. NEHEMKIS. I show you a confidential document relating to Usepco bearing the initials of Mr. Wilson, with the date 12/18/35, which purports to come from the files of your company. Tell me whether you recognize this as a true and correct copy.

Mr. FULLER. It would seem to be.

Mr. NEHEMKIS. And I show you another cable from Schrobanco to Adshead, a code address, 17 John Street, Adelphi, London, signed by Robin, and tell me if you likewise recognize this as a correct copy.

Mr. FULLER. Yes.

Mr. NEHEMKIS. In the confidential memorandum prepared by Robin Wilson in regard to Usepco, Mr. Emanuel, he had this to say [reading from "Exhibit No. 1949"]:

Emanuel believe that the Chase Bank, Chemical Bank and Guaranty Trust are prepared to sell for \$3,000,000 their claim against USEPCO which is secured by that company's holdings of Standard Power & Light shares. He proposes to offer them \$1,000,000 and thinks they might compromise at between \$1,500,000 and \$2,000,000. He proposes:

(a) A three party joint account with this transaction between himself, Leadenhall Securities and Hydro Electric.

Mr. Fuller, Leadenhall Securities is the investment end of the London bank. Is that correct?

Mr. FULLER. I would say it is a wholly owned financing company of Schroder, London.

Mr. NEHEMKIS [reading further from "Exhibit No. 1949"]:

Having acquired the claim, he would foreclose and take title to the Standard Power & Light stock. He would then call a meeting of directors and principal stockholders of USEPCO and inform them that the shares of USEPCO were valueless, but he proposed to offer pro rata to each shareholder of USEPCO the right to buy from our syndicate all the Standard Power & Light shares, less a small number of commission shares, for the sum which we had paid for them. These Standard Power & Light shares are about 70% of the company and before making the offer to USEPCO shareholders, he would want the directors to confirm that our syndicate acquired the benefit of the existing contract allotting 75% of Standard Gas financing to the present finance group. Our syndicate would then be left with such shares of Standard Power & Light as USEPCO shareholders would not take up, and the right to 75% of Standard Gas financing.

The next step would be to confirm with the Byllesbys that their management contracts with Standard Gas were secure, and obtain their cooperation in liquidating Standard Power & Light, shareholders of which would receive their due proportion of Standard Gas & Electric shares, thereby turning our syndicate's investment into marketable securities.

Mr. Emanuel, in whose interest were you working, the stockholders or the interest of Victor Emanuel and his associates? I offer the

document identified by Mr. Fuller and the cable from Robin to Adshead.

(The documents referred to were marked "Exhibits Nos. 1949 and 1950" and are included in the appendix on p. 12879.)

Mr. EMANUEL. I was working solely in the interest of the United States Electric stockholders. I did not send that cable. I never saw that cable or heard of that cable until at this time.

Mr. NEHEMKIS. Does Robin's statement misrepresent your position?

Mr. EMANUEL. It certainly did, if that is what he said.

Mr. NEHEMKIS. He was identified by Mr. Fuller as a close associate of yours, tied up with Schrodpriv, and he should have known what was going on.

Mr. EMANUEL. He may have known perfectly well what was going on, but you are asking me to say that those were my views. This entire thing, until the time that Founders withdrew, was entirely to save this for the United States Electric stockholders.

Mr. NEHEMKIS. Do you deny, Mr. Emanuel, that the steps laid forth in that confidential memorandum by Wilson were not those that you intended to pursue at the time?

Mr. EMANUEL. I can't speak for what Mr. Wilson said, but they certainly don't coincide with any views that I can now recall.

Mr. NEHEMKIS. Do you think it is possible that the steps set forth in that confidential memorandum could have been misunderstood by Robin Wilson, who was in close association with you and the other interests, and who, as a matter of fact, was in this country at the time to represent the London interests; could he have so misunderstood the steps?

Mr. EMANUEL. I might say that up to that time I knew Robin Wilson; I did not know him well. Since then I have known him much better. At that time I wouldn't have construed that Robin Wilson represented any interest in this company other than his house happened to be bankers in London for the Hydro Electric Securities Corporation.

Mr. HENDERSON. Could I ask a question, Mr. Fuller? You said that your company has no interest in Hydro?

Mr. FULLER. No financial interest in Hydro.

Mr. HENDERSON. Partners do not have any interest financially?

Mr. FULLER. No; not of any substance.

Mr. HENDERSON. There is no kind of interest on the part of the partners of the company, directly or indirectly, in Hydro?

Mr. FULLER. There is a personal relationship. They are banker advisers to them. Two of the members of the Schroder organization are on the board of Hydro as bank advisers. I was referring specifically to financial interest, which they never had. They never sponsored Hydro or securities to the public. It has been a purely banker advisory relationship all through.

Mr. EMANUEL. I would like to say, Mr. Henderson, I don't think the time that cable¹ was sent—I don't recall that any of the associates of Schroder were even on the board; they might have been.

Mr. FULLER. I think there was one at that time rather than two, but that one had very little to do with the affairs of the company.

Mr. HENDERSON. Were you going into the question of what Mr. Emanuel did have in mind at that time?

¹ Referring to "Exhibit No. 1950."

Mr. NEHEMKIS. I think, sir, that the evidence as it unfolds itself will indicate that.

Mr. Fuller, I show you a cable from Schrodpriv and another cable from Schrodpriv of December 19, 1935, and December 20, 1935. Will you examine them and tell me whether you recognize them to be true and correct copies? Do you recognize those as coming from your files, Mr. Fuller?

Mr. FULLER. Yes.

Mr. NEHEMKIS. I note in the cable from Schrodpriv to Schrobanco, addressed to the attention of Beal, the following reference [reading from "Exhibit No. 1951"]:

Robins wire USEPCO think preferable await definite plan.

Apparently Robin was pretty close to the London people at the time, Mr. Emanuel—

Mr. FULLER (interposing). He was employed by them at the time.

Mr. NEHEMKIS. So he must have known what was going on. The two documents identified by the witness are offered in evidence.

(The cablegrams referred to were marked "Exhibit No. 1951 and 1952-1" and are included in appendix on p. 12880.)

IMPORTANCE OF FUTURE STANDARD POWER & LIGHT CO. SYSTEM FINANCING IN CONSIDERING REDEMPTION OF THE PLEDGED COLLATERAL

Mr. NEHEMKIS. Didn't Schrobanco, Mr. Fuller, get the details of the future possible financing from Mr. Emanuel?

Mr. FULLER. Yes; we had numerous details at various times of these proposed rescue parties that Mr. Emanuel has referred to. They changed from time to time. The documents you have just shown me were relatively early in the negotiations, and we always understood that Mr. Emanuel was trying very hard at the time to raise money, and it was rather difficult to raise money for any utility situation at that period, and as he discussed the matter with us, he naturally had to bring out any facts he could in the favorable side to persuade our clients of our London house to put up money, and I believe he brought out all the points that could be done, at least he got the money.

Mr. NEHEMKIS. I note, Mr. Emanuel, a memorandum which bears the initials R. W., dated 12/24/35, with this caption, and also initialed by Mr. Fuller [reading from "Exhibit No. 1952-2"]:

Standard Gas and Electric Co. Information obtained by Robin Wilson from Victor Emanuel—

And then a very elaborate detailed statement outlining the various steps to be taken in the future, dissolution steps, financing, in the near future, and so on, and then the following caption: "Possible New Financing," and then a list of the new financing with a notation, "\$700,000,000 total over years."

(The memorandum referred to was marked "Exhibit No. 1952-2" and is included in appendix on p. 12880.)

Mr. NEHEMKIS. Don't you think that Mr. Robin Wilson was pretty closely in touch with the situation and knew what was going on?

Then I call your attention to another caption, "Standard Gas Refunding, all issues now outstanding of subsidiaries mentioned by Victor Emanuel for refunding."

Mr. EMANUEL. I don't know just what your question is. I have never seen this document.

Mr. NEHEMKIS. My question was a very simple one. You indicated that Mr. Wilson apparently misconstrued the steps that were going through your mind at the time and that he might not have been informed. I merely call your attention to the fact that Wilson knew extremely intimately and with great detail everything that was taking place because you told him.

Mr. EMANUEL. He might have. I presume from what you say he was in this country during the time this particular thing was done, but what I am saying is you asked me whether I wasn't trying to help my own interests and not the stockholders of Usepco, and that is the only thing I took exception to, because I think I am the only one who would know that. Mr. Wilson wouldn't. I was talking to him about trying to save his company.

Mr. NEHEMKIS. Mr. Wilson had had many conferences with you, had he not?

Mr. EMANUEL. I can't recall; probably did.

Mr. NEHEMKIS. The evidence that has been going into the record indicates that he has.

Mr. EMANUEL. He may have; I didn't say he didn't.

Mr. NEHEMKIS. You don't remember whether or not he did?

Mr. EMANUEL. During this whole period this thing wasn't something that came up one month and then died for six months; there were dozens and dozens of conferences on this thing, meeting after meeting, the principal interests in Usepco making trip after trip to the bank.

Mr. NEHEMKIS. What about a memorandum like this, which reads:

Memorandum, Standard Gas and Electric Company. Information obtained by Robin Wilson from Victor Emanuel?

Take a look at it. Do you think a man can write a memorandum like that unless he knows what is in your mind? Just thumb through it. Look at the details of that memorandum. Where did Robin Wilson get this information?

Mr. EMANUEL. I never said, Mr. Nehemkis, that he didn't get information from me; he undoubtedly did.

Mr. NEHEMKIS. Mr. Fuller, I show you a letter by Carlton P. Fuller to Mr. John L. Simpson, dated December 26, 1935, which purports to come from the files of Schroder Rockefeller & Co., Inc. Will you be good enough to tell me whether this is in fact a true copy? And tell me whether you recognize that as having been a letter you wrote.

Mr. FULLER. Yes; Mr. Simpson was at that time in Paris, which was much closer to the real source of authority on Hydro, which was Brussels, than we were, and we naturally wanted to keep him fully informed of any negotiations over here, just as Mr. Wilson had to keep his principals in London, who were advising Hydro, informed, and therefore many details were transmitted at various times about various trips of proposed rescue parties.

Mr. NEHEMKIS. In other words, the traveling ambassadors at this time were Robin Wilson, with headquarters in London, and John Simpson, making headquarters in Paris, but working toward Belgium?

Mr. FULLER. They happened to be in those places, not for this particular business, because they were regular trips they made, and this business came up while they were there.

Mr. NEHEMKIS. The document identified by the witness is offered in evidence, may it please the Committee.

Acting Chairman WILLIAMS. It may be received.

(The letter referred to was marked "Exhibit No. 1953" and appears in the appendix on p. 12882.)

Mr. NEHEMKIS. This letter reads as follows [reading from "Exhibit No. 1953"]:

Jerry—

May I know who Jerry is, please?

Mr. FULLER. Mr. Beal; we have two Jerrys.

Mr. NEHEMKIS (continuing):

Jerry and I have just spent four hours with Robin and Victor Emanuel on this situation—

And "this situation," according to the caption of the letter is re U. S. Electric?

Mr. FULLER. That situation was the question of buying the collateral or the notes from the bank and raising money to do it.

Mr. NEHEMKIS (reading further from "Exhibit No. 1953"):

And Robin has departed for the boat, escorted by Victor. He is extremely keen on the situation we have been discussing and we have been having long talks in London about it as well as with you upon your return there, so that we thought you would like to have our own slant on the whole matter.

And then the letter—I won't read all the details set out in very neat little captions: "Proposal"; then there comes one under the category "Strategy," which I would like to read:

Jerry has emphasized with Robin that the latter's chief object upon his return should be to convince Hydro and other prospective underwriters that the Standard Power & Light stock securing the bank loans is an attractive gamble at the present time.

Now, according to the evidence which has gone into the record only a few minutes ago, Schroder thought it was practically worthless.

Mr. FULLER. I would like to call attention there to the word "gamble" and call attention also to the market situation in second-grade utilities at that time.

Mr. NEHEMKIS. The record so shows your comment, Mr. Fuller [reading from "Exhibit No. 1953"]:

Leaving the question of the financing well in the background in order that it may not appear that the scheme is designed to use other people's money for acquiring a position in the financing . . .

Mr. Fuller, isn't that exactly what the scheme was designed to do?

Mr. FULLER. I call your attention that this is a letter concerned with Hydro-Electric Securities' money and "other people's money" is their money as distinguished from Schroder money. At that time we were just renewing our contact with Hydro after Fisher's death, and I may say that the relationships were not very good. Today we could go to them on a direct basis and discuss the whole thing. At that time we didn't want to emphasize the advantages we would get, which were important in our minds.

Mr. NEHEMKIS. Now, another comment by you set out under the category, "Receivership" [Reading further "Exhibit No. 1953"]:

A 77b action has been proceeding since the October 1st default—

That is the default in the interest on the notes?

Mr. FULLER. Standard Gas notes.

Mr. NEHEMKIS. Standard Gas notes?

Mr. FULLER. I assume so.

Mr. NEHEMKIS. [Reading further from "Exhibit No. 1953"]:

* * * but the conditions of this receivership seems unusually lenient, with the Management left as sole Trustees, 70% of the maturing bonds now in the hands of the Committee representing the Management, and the opposing Protective Committees not too obstreperous. On the information Emanuel produces, it would not seem unlikely that the Company could be brought out of receivership in the near future.

And then the following caption on page 3 of your letter to Mr. Simpson: "Future financing."

Since Jerry has written you separately regarding our prospects for doing underwriting, we'll simply assume here that we shall find a way to take advantage of such a situation as we are discussing. Once the group has acquired the claims from the banks, there will undoubtedly be terrifically bitter negotiations with the present Usepco group over the future division of financing. The idea is not to exclude them from it, but to swap with them participation in some of their financing. The plan is to leave the Byllesby management and interest in the situation undisturbed.

And then you conclude with the caption, "Our point of view:" which I read to you:

We are not carried away by all these big figures, nor by Emanuel's eloquence, nor by Robin's enthusiasm. We are, however, definitely impressed by the possibility of getting into the middle of a very large picture with good gambling possibilities, on the basis of a moderate contingent commitment.

Is this prospective commitment really moderate? We certainly would not undertake such a contingent guarantee if it amounted to a million dollars maximum if the situation proves entirely worthless, and we should definitely prefer it to be only \$100,000. Nevertheless, a \$250,000 maximum commitment, especially when it begins to operate only after a 50% decline in the relatively low cost of acquisition, does not seem to us out of line with the possibilities in the situation. (These possibilities, of course, include deposits and fiscal agencies from the Standard Gas system and perhaps an underwriting commission in the form of Standard Power & Light shares at the time they are offered to Usepco shareholders.)

We have fully in mind, of course, the political pressure on utilities, the fact that Standard Gas may not get out of receivership as soon as Emanuel expects, the possibility that the banks may decide not to sell their claims at a sufficiently low price, the difficulties of making arrangements with the present Usepco group, the stickiness of some Standard Gas securities even if we control the financing, etc., etc. Nevertheless, we think there is a chance to make a good play here without any heavy commitment, and we hope that Robin will be able to produce some sort of bid from Hydro and others to be presented to the banks.

Now, Mr. Simpson was not certain of the wisdom of buying into the financing, was he?

Mr. FULLER. Neither were any of us. We lined up the possibilities, as you so very clearly and eloquently read, at the time, and we thought for a modified commitment anything we could do would be useful.

Mr. NEHEMKIS. Yes; it was a good deal as it appeared at that time and Mr. Simpson's feeling was that Schrobanco would probably get little consideration unless it did, however, buy in.

Mr. FULLER. That is right, our relations with Hydro were such at the time we couldn't count on full support in any sort of undertaking.

Mr. NEHEMKIS. And the thing you were buying in here was financing?

Mr. FULLER. As far as Schroder Banking Corporation was concerned, they were interested in any banking participation they could get because that was their function. As far as Hydro was concerned, they also had the investment interest in mind.

Mr. NEHEMKIS. Schroder was interested in deposits, etc?

Mr. FULLER. Yes; in any banking participation.

Mr. NEHEMKIS. And the thing that you really were concerned about, or rather your people were really concerned about, was the possibility of buying into the future financing of this system. However, the medium for buying in would ultimately be worked out, is that correct, sir?

Mr. FULLER. As far as we were concerned, that is our business and naturally what we were interested in.

Mr. NEHEMKIS. However, while Schrobanco may not have been too keen on the deal, you, Mr. Emanuel, never lost your original enthusiasm, did you?

Mr. EMANUEL. Keen on what deal?

Mr. NEHEMKIS. Buying in on 75 percent of the financing of Standard Gas System, that is what we are talking about.

Mr. EMANUEL. That was not a primary consideration with me. I was trying to save this company.

Mr. NEHEMKIS. Save the company for the stockholders?

Mr. EMANUEL. Yes, sir.

Mr. NEHEMKIS. I wanted to be clear, Mr. Emanuel.

Mr. Emanuel, perhaps you can recall a cablegram to Schroder, London, from yourself, dated January 8, 1936, in which you, among other things, had this to say to Major Pam and Robin Wilson [reading from "Exhibit No. 1954-1"]:

Of course as previously explained, it impossible avoid participation in particular pieces System financing by houses long identified in the business with local houses in territories served which however never major amount which situation understood by your office here from their previous experience in Systems financing (stop) As explained the negotiations with other houses which are part of American group now in business would have to be conducted delicately and one hundred percent reciprocation might not be possible or advisable.

Suppose you look at that and tell me whether that isn't a cable you sent to Major Pam and Robin Wilson?

Mr. EMANUEL. That cable was probably sent by me. By this time, 1936, the Founders' group, as I have previously testified, distributed their shares in Usepeco. Fisher I think by that time had died. He had been my contact with the Hydro Company, and ever since Loewenstein's death, he is the one who had worked with me on any number of previous plans.

At this particular point, it seemed impossible to save this company with the resources of the company in America who had been working on it previously, because we had lost Founders' support, and on Fisher's death, it made the Hydro situation very difficult, but what I was trying to do was to do anything I possibly could leading

toward a redemption of this collateral and this collateral was finally redeemed and it was offered to the United States Electric shareholders at the exact same price at which it was redeemed.

I am perfectly willing to admit in order to get that done, in which I have spent my life during this whole period, and because all the time from the time United States Electric was formed the depression started immediately afterwards, and this company had had trouble; I had served it for many years without any salary or other compensation, and in fact paid good many of the expenses out of my own pocket. I was willing to do almost anything to save some stake in this thing for the stockholders. That was my primary consideration. I admit that Emanuel & Co. by this time was in the investment banking business, but they never could have participated much in any financing because we weren't a large house. I think there was only one issue in which Emanuel & Co. had what you might call a really large participation.

(The cable referred to was marked "Exhibit No. 1954-1" and is included in the appendix on p. 12884.)

Mr. NEHEMKIS. Mr. Fuller, I show you a letter from yourself to Mr. John L. Simpson, dated January 10, 1936. Can you tell me whether you recognize this to be a true and correct copy of an original in your possession and custody?

I meant to ask you, Mr. Emanuel, you intended, did you not, for the preferred stockholders to take up their pro rata share?

Mr. EMANUEL. I think we had some formula worked whereby they were to take up a small number of the shares. We didn't give them a very generous percentage because that stock was only held in three hands, as I recall it.

Mr. NEHEMKIS. Now, if the stockholders had taken up that offer, it would have just about ruined your plans, wouldn't it?

Mr. EMANUEL. No; that is what we wanted them to do, is to take it up. They took about a third of the stock, as I recall it.

Mr. NEHEMKIS. You mean you wanted them on paper to do that, but you hoped they wouldn't?

Mr. EMANUEL. No, sir; we hoped that they would, but we couldn't send out any selling letters on it because this stock wasn't registered.

Mr. NEHEMKIS. Have you identified the letter for me, Mr. Fuller?

Mr. FULLER. Yes.

Mr. NEHEMKIS. "Yes" means it is a true and correct copy of an original in your possession?

Mr. FULLER. I presume so, I haven't seen the original for some time.

Mr. NEHEMKIS. The document is offered in evidence.

Acting Chairman WILLIAMS. Do you mean the whole document? Some of it seems to be crossed out.

Mr. NEHEMKIS. I apologize for that, that is an error. I don't know how those lines got on it. But the document should be printed, if you will so order it, in its entirety.

Acting Chairman WILLIAMS. It may be admitted.

(The letter referred to was marked "Exhibit No. 1954-2" and is included in the appendix on p. 12886.)

FURTHER EFFORTS TO REGAIN THE COLLATERAL—1936

Mr. NEHEMKIS. I want to read to you, Mr. Emanuel, from Mr. Fuller's letter which he has just identified. This is on page 3 of Mr. Fuller's letter of January 10, 1936, to Mr. Simpson, London [reading from "Exhibit No. 1954-2"]:

After the above discussion of philosophy, you may be interested to learn that Victor Emanuel is all in a sweat about how to proceed next in this situation after receiving approval of the \$2,000,000 bid limit. The promptness of the action on the \$2,000,000 really staggered him a bit and made him wonder if Robin had fully disclosed all the obstacles in the situation, such as the possibility of a long lock-up before Standard Power & Light stock can be reduced to possession on account of delays in registration of the stock; or the other possibility that Usepeo stockholders *may*—

Note that word, it is underlined in this letter—

take up Standard Power & Light stock and leave our group with only Hydro's 25% participation in hand, whereas real control—

Mind you, I am not manufacturing these words, I am reading a letter from Mr. Carlton P. Fuller—

whereas real control of the financing depends on a 51% voting control of the Standard Power Board, which could then be obtained only through proxy solicitation, etc., etc. Emanuel (still believing that the London group will do all its underwriting in this situation through us as soon as we have set up a new vehicle) is trying definitely to tie Schrobanco into all these problems so that London will not place the entire blame on his shoulders if a fiasco results.

It is really a frightfully complicated situation—

And I sympathize with you, Mr. Fuller, it is,—

and both he and we are trying to avoid a denouement in which we would have lost the business and at the same time have antagonized all the present financial group. Equally, we wish to proceed so that our bid can't be used to raise that of some competitor. There is also the problem of possibly getting together with Harrison Williams.

All of which may lead you to conclude with us that the deal is far from done; but there is some money in hand now, and before the time this reaches you, another stage will probably have developed.

Since writing the above, more gyrations have occurred, and Emanuel has decided not to talk to the Chase today but sit down with us tomorrow to plan the campaign once more. Allen Dulles has called up to tell us a little more openly than previously that Harrison Williams is interested in the picture, so the kettle is boiling merrily, and probably Victor will approach the Chase on Monday.

Now, will you tell me who Allen Dulles is?

Mr. FULLER. He is counsel for Schroder Banking Corporation.

Mr. NEHEMKIS. And he is connected with what law firm?

Mr. FULLER. Sullivan & Cromwell.

Mr. NEHEMKIS. Can you explain to me the meaning of this rather cryptic statement [referring to "Exhibit No. 1954-2"]:

Allen Dulles has called up to tell us a little more openly than previously that Harrison Williams is interested in the picture.

Mr. FULLER. As Mr. Emanuel has testified, it was well known Mr. Williams was interested in the Standard Gas picture at the time, but we had not received any direct intimation of that fact until counsel indicated that someone might be, not identifying the someone, and at this time apparently he disclosed the principal for whom he had indicated an interest.

Mr. NEHEMKIS. But previously he had been apparently somewhat reluctant to make this information available, although you thought you knew it.

Mr. FULLER. Presumably he had not been authorized by this principal to reveal the name of the principal.

Mr. NEHEMKIS. And Mr. Dulles was then representing Harrison Williams?

Mr. FULLER. No; other members of the firm represented Harrison Williams, and he represented us.

Mr. NEHEMKIS. And Allen Dulles represented Schrobanco?

Mr. FULLER. As general counsel.

Mr. NEHEMKIS. But the same firm, however, was representing two different interests; is that your understanding?

Mr. FULLER. Well, I hope they represented many different interests for their sakes.

Mr. NEHEMKIS. I am addressing myself to the facts in hand. As you have testified, apparently Sullivan & Cromwell represented Harrison Williams.

Mr. FULLER. They are general counsel for North American Co.

Mr. NEHEMKIS. You have also testified that Allen Dulles, a partner of the firm, represented Schrobanco.

Mr. FULLER. That is right, and a lot of other clients.

Mr. NEHEMKIS. I didn't ask you that. Confine yourself to my questions, if you will, sir.

Did not the Hydro London interests agree to put up \$1,500,000 in the deal?

Mr. FULLER. What time is this?

Mr. NEHEMKIS. This is in January of 1936.

Mr. FULLER. I have forgotten the time there, but I remember the amount that the London interests were persuaded to put up varied from, I think, a low of \$1,000,000 to an eventual high of a \$1,500,000 or a \$1,750,000.

Mr. NEHEMKIS. I show you two cables from Schrobanco to Schropriv, London. Will you be good enough to examine them and tell me whether you recognize these to be true and correct copies?

Mr. FULLER. Yes; these indicate that Mr. Emanuel had made some progress in trying to persuade the Hydro interests to put in some money which he had started when Mr. Wilson was in the country.

Mr. NEHEMKIS. That was not my question. My question was, do you identify these two documents as being true and correct copies of documents in your possession and custody?

Mr. FULLER. I said yes.

Mr. NEHEMKIS. Thank you, sir. I note that the cable dated January 15, 1936, to Schropriv bears the notation: "Copy to Mr. Emanuel," and the cable dated January 14, 1936, reads as follows [reading from "Exhibit No. 1955"]:

Emanuel made tentative approach Chase and had favorable reception but finds active competition from Harrison Williams through Guaranty and others (stop)

Emanuel indicated they must be prepared put in cash and/or reciprocal financing if they wished retain position in Standard financing (stop) Initial reaction favorable and substantial cash will probably be forthcoming as well as good start on later reciprocal financing agreements (stop) If business can be done for two million dollars Emanuel assumes you would be willing if necessary to allocate up to five hundred thousand to that group leaving total London participation at one million dollars and total American one million including Emanuel for minimum \$250,000 (stop)

What is the meaning of this expression that the group, if they wish to retain their position in Standard financing, would have to either put up cash or indicate that reciprocity on future financing was in order, Mr. Emanuel?

Mr. EMANUEL. I don't know. I didn't send that cablegram.

Mr. NEHEMKIS. Does that misrepresent your views at the time?

Mr. EMANUEL. I can't say exactly what my views were. What I was trying to raise was cash.

Mr. NEHEMKIS. And you went around to the group and said, if I might put it in colloquial language, "You fellows fork over either cold cash or assure us of future reciprocity in financing, or you are out of this deal."

Mr. EMANUEL. I certainly don't think I did. I don't remember asking for any reciprocity. I was trying to raise money for this deal, and I might also add I was in constant touch with other members of the North American group throughout all the negotiations from the time they started.

Mr. NEHEMKIS. Mr. Fuller, this cable which you were good enough to identify bears your initials, its authorization over the cable wires was by you; how does it happen you so grossly misunderstood Mr. Emanuel?

Mr. FULLER. Do you expect me to answer that question?

Mr. NEHEMKIS. Yes; why not?

Mr. FULLER. I don't know how to answer it.

Mr. NEHEMKIS. Did you misunderstand Mr. Emanuel? You were charged with the responsibility of informing London of developments. Mr. Emanuel has no recollection of this fact. You state in the opening of your cable. [Reading from "Exhibit No. 1955"]:

Emanuel made tentative approach Chase—

And so forth, then you proceed to indicate—

Emanuel indicated they must be prepared put in cash and/or reciprocal financing if they wished retain position in financing.

Mr. FULLER. I can't interpret that cable for you but I can tell you in general what the situation was then. Very definitely we were interested in either financing or reciprocity or anything else we could get or they could give us.

Mr. NEHEMKIS. Did you write this cable?

Mr. FULLER. Are my initials on it?

Mr. NEHEMKIS. Yes.

Mr. FULLER. I wrote it; yes.

Mr. NEHEMKIS. The cable identified by the witness is offered in evidence.

Acting Chairman WILLIAMS. This may be received.

(The cablegram referred to was marked "Exhibit No. 1955" and is included in the appendix on p. 12887.)

Mr. NEHEMKIS. And the second cable which Mr. Fuller has been good enough to identify has the following that I call to the committee's attention. [Reading from "Exhibit No. 1956":]

Hydro Schroder group agree they will take participation of between \$1,000,000 and \$1,500,000 in purchase provided total cost does not exceed \$2,500,000 and provided their proportion not less /than/ 50% of total (stop)

While approving Emanuel tactics we wish to be kept informed important negotiations and also to know what percentage financial benefits will accrue to our group direct and reciprocal.

And that, I call to the committee's attention, is a cable from Schrodpriv to Schrobanco at New York, and a copy of which was sent to Mr. Emanuel.

I offer this in evidence.

Acting Chairman WILLIAMS. This may be received.

(The cablegram referred to was marked "Exhibit No. 1956" and is included in the appendix on p. 12887.)

Mr. NEHEMKIS. At this time London was pretty hard put, was it not, to see what benefits it could get from this deal, do you recall that?

Mr. FULLER. I recall very well they had gone into the merits of things as a speculation and decided it had some speculative merit but was a borderline case. They were more convinced of the prospects of second-grade utilities than we were in this country, but not quite convinced enough and had some trouble in persuading their clients, one of whom was Hydro, of the benefits at that time of proposing second-grade utilities in the utility division of the market, and they actually acquired some other securities. In this particular case they didn't think it quite made the grade for a purchase that way and all sorts of arguments had to be used to get them to do the one which was of possible benefit for the financing. That was a very definite consideration all the way through this period because the gambling attraction of it as a speculative security wasn't of quite enough interest.

J. HENRY SCHRODER & CO., LONDON, DESIRES ASSURANCE ON FUTURE
STANDARD POWER & LIGHT CO. FINANCING

Mr. NEHEMKIS. Mr. Fuller, will you be good enough to examine a copy of the cablegram from Schrodpriv, presumably to Schrobanco, and tell me whether you recognize it to be a true and correct copy of an original in your files and custody?

Mr. FULLER. Yes.

Mr. NEHEMKIS. Before you release it, will you take it back, please? There appears on the lower left-hand margin a pencil notation. Will you read that, please?

Mr. FULLER. It says, "Copy to Mr. Emanuel."

Mr. NEHEMKIS. I beg pardon? What did you say?

Mr. FULLER. It says, "Copy to Mr. Emanuel."

Mr. NEHEMKIS. Cable No. 135 from Schrodpriv in London to Schrobanco, dated February 14, 1936 [reading from "Exhibit No. 1957"]:

To help us form opinion as to advisability for Hydro and other clients participating in Usepco loan acquisition should Emanuel make suitable proposal, please enlighten us on value of share in future refinancing Standing Gas subsidiaries STOP

Emanuel has repeatedly said that this financing probably more valuable than prospects of appreciation of Standard Power stock so we want assurance that new syndicate will really thus acquire valuable asset STOP

The London banking house were rather shrewd fellows; they wanted to know precisely what it is they were putting their money in, weren't they, Mr. Fuller?

Mr. FULLER. That is quite right.

Mr. NEHEMKIS. Now [Reading further from "Exhibit No. 1957"]:

Please discuss with Emanuel and cable how this asset could in your opinion be valorised STOP

That meant if Schrodpriv put its money in here the one thing they were concerned about, were they not, is how they could write this thing up on their books as an asset, does it not?

Mr. FULLER. No; they weren't. Schroder, London, were not putting any money in this at any time.

Mr. NEHEMKIS. I mean Hydro was putting the money in.

Mr. FULLER. They wanted to know how they could justify an investment that had no return on it in a speculative field when it didn't seem quite as valuable as some other speculative investments at the time; if they could show how they could get a return, they might justify themselves.

Mr. NEHEMKIS. That was with reference to "Please discuss with Emanuel and cable how this asset could in your opinion be valorized"?

Mr. FULLER. Yes.

Mr. NEHEMKIS [Reading further from "Exhibit No. 1957"]:

Is there no danger that present First Boston syndicate could insist on right future financing without compensation to us STOP

Even if syndicate could acquire right to 75% future financing what benefit could there be to Hydro and others here who are not American issuing house STOP

Please cable fully to enable us explain situation in detail to our friends.

The document identified by Witness Fuller, from which I have been reading is offered in evidence, Mr. Chairman.

Acting Chairman WILLIAMS. It will be received.

(The cable referred to was marked "Exhibit No. 1957" and is included in the appendix on p. 12887.)

Mr. NEHEMKIS. Now, you spent a good deal of time in preparing your answer to Schrodpriv's cable, did you not, Mr. Fuller?

Mr. FULLER. Presumably.

Mr. NEHEMKIS. And you consulted with Mr. Emanuel, did you not, about it?

Mr. FULLER. Presumably.

Mr. NEHEMKIS. And did you not also consult with Mr. Allen Dulles?

Mr. FULLER. At some stage, I am not sure just when it was.

Mr. NEHEMKIS. As a matter of fact, 4 days were required—excuse me. (Conferring with member of staff.)

As a matter of fact, 4 days were required to complete your studies before preparing the reply to Schrodpriv, do you recall?

Mr. FULLER. I don't recall, but if you have the document that shows so I assume it did.

Mr. NEHEMKIS. I show you four documents, dated February 17, 1936, February 18, February 20, and February 24, 1936, which purport to come from the files of your company. Will you be good enough to identify them for me, please?

Mr. FULLER. Yes; I identify them.

Mr. NEHEMKIS. This is a letter from Mr. Victor Emanuel under date of February 17, 1936, to you, Mr. Fuller. It reads as follows [Reading from "Exhibit No. 1958"]:

Dear Carl: I have now had a chance to read your draft of the cable to London in reply to their cable to you of the 14th, received by you on the 15th. I believe the cable is all right, except for the following suggestions;

1. That a satisfactory arrangement be worked out as to how you handle the agreed percentage of any profits to be paid the London group, but I presume you have talked to Alan Dulles about this.

Did you discuss this with Mr. Dulles?

Mr. FULLER. I presume so.

Mr. NEHEMKIS. And can you tell me at this time what Mr. Dulles advised?

Mr. FULLER. What was the question involved at the time? I was consulting him constantly.

Mr. NEHEMKIS (reading further from "Exhibit No. 1958"):

That a satisfactory arrangement to be worked out as to how you handle the agreed percentage of any profits to be paid the London group, but I presume you have talked to Alan Dulles about this.

Mr. FULLER. I can't recall right now what the particular discussion was.

Mr. NEHEMKIS. Then the next thought that Mr. Emanuel presented to you was this:

(5) The last statement in your cable is very conservative, as to Standard Gas financing, as all in all the underwriting group profit averages more than 1 point, which is the amount you have stated.

I do not know whether you want to say that the present USEPCO position of 75%, as a base for financing, is not covered by a legal agreement but by a memorandum, but that Byllesbys have verbally agreed with me, and will, I am certain, before we consummate a deal, agree to continue the memorandum to the new group, and that with this assurance, plus the position our stock would give us, there is no question in my mind that our group could inherit the position the present group now has. This, of course, does not change what you have said as to valorizing this for the London group who might not want to participate direct in the financing.

I offer the document in evidence, Mr. Chairman, as well as the two other documents identified by the witness. There should be four documents.

Acting Chairman WILLIAMS. They may be admitted.

(The documents referred to were marked "Exhibits Nos. 1958, 1959, 1960, and 1961-1" and are included in the appendix on pp. 12888-12890.)

Mr. NEHEMKIS. Now, the Usepco deal seems to have gone completely to sleep during this time. Do you recall, Mr. Emanuel?

Mr. EMANUEL. I don't know what the dates of those are.

Mr. NEHEMKIS. We are now in the early spring of the year 1936.

Mr. EMANUEL. I can't recall that exactly; I don't remember it ever slept very long.

Mr. NEHEMKIS. Now I show you a letter from Robin Wilson to you under date of the 27th of March, and I ask you to look at the third paragraph and see whether that doesn't refresh your recollection.

Mr. EMANUEL. This is a letter from Wilson evidently to me. It might have had a short lull. He rather gathers it was, but he might not know whether it was or not.

(The letter referred to was marked "Exhibit No. 1961-2" and is included in the appendix on p. 12891.)

Mr. NEHEMKIS. It was sort of slumbering embers on the fire all the time?

Mr. EMANUEL. Always.

Mr. NEHEMKIS. And when you gave a good, strong blow, why, up she went?

Mr. EMANUEL. It wasn't me giving a blow, if the banks wanted to reduce this collateral. I might help this whole thing by saying that I was doing anything I could to raise this money from any decent source.

Mr. NEHEMKIS. Mr. Wilson wrote to you as follows:

The USEPCO deal seems to have gone completely to sleep for the moment, but I gather from Carl Fuller that you are being kept pretty well informed of the intentions of our competitors. If by any chance the deal does come off I feel it will be a good thing for me to be in New York to represent our group in negotiations over our share of underwriting.

Just how were you informed, Mr. Emanuel, of what your competitors were doing at this time, and what their intentions were?

Mr. EMANUEL. I swear I don't know. I naturally heard one way or the other of people considering the purchase of this collateral. The only person I can think of at the moment principally was Harrison Williams, I knew he was interested. I can't say just exactly at that time, during the period about this collateral.

Mr. NEHEMKIS. It just strikes me as being a little bit unusual for a man in your position, who has a tremendous stake here, to know what his competitor's moves are. How did you know what Harrison Williams was going to do in this situation?

Mr. EMANUEL. I certainly didn't know from him.

Mr. NEHEMKIS. That is it. Now how did you know?

Mr. EMANUEL. I don't know.

Mr. NEHEMKIS. But somehow or other you did manage to keep pretty well informed of what the next move would be?

Mr. EMANUEL. I suppose what happened at times, one of the bank officers would call me up and say I had better put on all the hurry I could in resolving this matter. I suppose that is the way I knew.

Mr. NEHEMKIS. By the way, who was your counsel at this time?

Mr. EMANUEL. Seibert and Riggs.

Mr. NEHEMKIS. Seibert and Riggs are in New York, your counsel?

Mr. EMANUEL. Yes, they are.

Mr. NEHEMKIS. Now about this time that we are discussing the problem, the spring of '36, did not Bancamerica Blair come into the picture, do you recall?

Mr. EMANUEL. Yes, they came in sometime before we had what we called rescue parties.

Mr. NEHEMKIS. And there were certain difficulties that were cropping up at this time about giving Hydro underwriting participations, do you recall that, Mr. Emanuel?

Mr. EMANUEL. Well, it is pretty hard to recall. I don't think Hydro ever wanted underwriting. They never have been bankers, to my knowledge, at any time.

Mr. NEHEMKIS. Now, Mr. Fuller, may I trouble you once again to identify a cablegram from Schrodpriv to Schrobanco under date of May 26, 1936. Would you identify the cable I am now showing you at the same time?

Mr. FULLER. (Examines and returns papers to Mr. Nehemkis without comment.)

Mr. NEHEMKIS. Mr. Emanuel, I want to call your attention to a paragraph in Schroderpriv's cable to Schrobanco as of May 22, 1936.

Mr. FULLER. May I point out those cables are to a particular person; the cables are addressed to a particular person.

Mr. NEHEMKIS. This is addressed for Mr. Wilson and this one refers to 257.

Mr. FULLER. Yes.

Mr. NEHEMKIS. (Reading from "Exhibit No. 1962"):

We could certainly arrange with Hydro and others to accept less than theoretical percentage if all risk avoided although we understand underwriting and even selling syndicate now practically without any risk owing to new issue conditions but drop from point 375 to point one seems impossible to explain and we fear great difficulties.

And then came the reply to that.

(Reading from "Exhibit No. 1963"):

Very difficult for foreign underwriter like Leadenhall enforce reciprocity and Schroder Inc. would have hard work to protect our interests. There still is risk on underwriting because underwriting group must take commitment few hours before registration statement effective and selling group cannot be legally bound until registration effective.

Now I had assumed that there was—at least from the testimony of the witnesses who have appeared before this committee—tremendous risk involved in underwriting and I now find out that there is very little risk, and whatever risk does occur in a matter of a few hours.

Mr. FULLER. That is why I wanted to point out who wrote the cables; those were written by Mr. Wilson of our London office, who was here in New York at the time, and they are very clear evidence of some of the difficulties we were having in the situation where they assumed that London conditions might be the same as in this country, and they also had the very false assumption that the Securities Act and the other legislation at the time set up for the protection of investors had made it perfectly riskless for the underwriter. They just didn't know the facts.

Mr. Wilson discovered some of the facts while he was here and still rather played them down in his cable saying a few hours' risk.

Mr. NEHEMKIS. I call to your attention, Mr. Fuller, that this cable¹ which you have identified, bears your initials; that its transmission over the wire from Schrobanco to Schroderpriv was authorized by CPF, being Carlton P. Fuller. If Mr. Wilson had made such a mistake as to misunderstand syndication under American conditions, how did it happen you authorized the transmission of that cable?

Mr. FULLER. Authorization simply means authorized to be charged to a certain account, and has nothing to do with the content of the cable itself.

Mr. NEHEMKIS. And you were not at all concerned about the content of this cable when it passed your desk?

Mr. FULLER. I didn't say that.

Mr. NEHEMKIS. What?

Mr. FULLER. I didn't say that.

Mr. NEHEMKIS. You saw the cable?

Mr. FULLER. Yes; but I didn't say I wasn't concerned with the content; I simply said I didn't censor the cable.

¹ "Exhibit No. 1963."

Mr. NEHEMKIS. But certainly this was a most serious thing to let your London people have the impression that underwriting involves no risk. How did it happen that you allowed this cable to go over your desk?

Mr. FULLER. The cable,¹ as I recall, says that is only a few hours risk; a few hours might in that terminology mean 48 hours. We are dealing here with high grade securities and that probably was the understanding at the time.

Mr. NEHEMKIS. You think about all the underwriting risk there is today is probably 48 hours?

Mr. FULLER. I didn't say that. I said at the time this cable was written that is probably the understanding that went into it. You must remember at that time we ourselves were not in the underwriting business; all the Security Acts were relatively new, certainly as far as we were concerned, and therefore our more complete knowledge of today cannot be attributed to that period in which the cable was written. There was a whole period of education going on there then.

Mr. NEHEMKIS. I recall your attention, however, that this was in May of 1936.

Mr. FULLER. That is right.

Mr. NEHEMKIS. Now, Mr. Chairman, I don't believe I have offered in evidence the cable from which I have just been reading, being cable dated May 25, 1936, identified by the witness. As well as the cable identified by Mr. Fuller to which the cable you now have is an answer.

Acting Chairman WILLIAMS. They may be admitted.

(The cables referred to were marked "Exhibits Nos. 1962 and 1963" and are included in the appendix on p. 12892.)

OBTAINING THE STANDARD POWER & LIGHT CO. STOCK PLEDGED AS COLLATERAL—ORGANIZATION OF SCHRODER ROCKEFELLER & CO., INC., JULY 1936—AGREEMENT WITH J. HENRY SCHRODER & CO., LONDON

Mr. NEHEMKIS. I show you, Mr. Fuller, a letter dated August 24, 1936, to Messrs. Schroder Rockefeller and Company, Inc., from the London banking house of J. Henry Schroder and Company. Do you recognize this to be a true and correct copy of an original in your possession?

Mr. FULLER. It seems to be a copy of an agreement by which they were to share in the proceeds of underwritings; yes.

Mr. NEHEMKIS. I offer the document in evidence, Mr. Chairman.

Acting Chairman WILLIAMS. It may be received.

(The document referred to was marked "Exhibit No. 1964" and is included in the appendix on p. 12893.)

Mr. NEHEMKIS. Eventually the Usepco notes were reported to the banks, were they not, and the Standard Gas stock reduced to possession?

Mr. FULLER. The Standard Power stock reduced to possession.

Mr. NEHEMKIS. Standard Power, is that your understanding, Mr. Emanuel?

Mr. EMANUEL. That is right.

¹ "Exhibit No. 1963."

Mr. HENDERSON. What was the amount paid eventually?

Mr. EMANUEL. \$3,500,000 cash.

Mr. NEHEMKIS. What was the value of the stock?

Mr. EMANUEL. I couldn't recall at that time. I think it was probably less than that, or a little less than that.

Mr. NEHEMKIS. Mr. Fuller, when was Schroder Rockefeller & Co., Inc., organized?

Mr. FULLER. Early in July 1936.

Mr. NEHEMKIS. And can you tell me the purpose underlying the organization of Schroder Rockefeller?

Mr. FULLER. Yes; to engage in the underwriting of securities business.

Mr. NEHEMKIS. Who was instrumental in organizing Schroder Rockefeller?

Mr. FULLER. Several Schroder interests and Rockefeller interests, primarily.

Mr. NEHEMKIS. And who owns the stock of Schroder Rockefeller?

Mr. FULLER. There are two classes of the million-dollar capitalization; the nonvoting stock is practically all owned by the Schroder banking corporation; the voting stock is owned, \$200,000 by Mr. Avery Rockefeller and his family; \$225,000 by J. Henry Schroder & Co., London; and \$50,000 by Atlas General & Industrial Investment Trust, London, which is an independent investment trust.

Mr. NEHEMKIS. And was not Schroder Rockefeller & Co. organized for the purpose of engaging in underwriting activities involving the 75-percent financing into which the European and American interests had bought?

Mr. FULLER. It was organized to get as much of a participation in Standard Gas financing as was possible under the circumstances, and to engage in other business.

Mr. NEHEMKIS. And did not Schroder Rockefeller enter into a contract¹ with its parent, J. Henry Schroder & Co.?

Mr. FULLER. This one you have just shown me?

Mr. NEHEMKIS. And which you have identified?

Mr. FULLER. Yes.

Mr. NEHEMKIS. And substantially what were the terms of that contract?

Mr. FULLER. As I have testified before, all through this period regarding the rescue party the London interests concerned wanted to see some way of getting a return on their money on their hook-up of funds. Various means discussed of doing that, ranging from their doing direct underwriting over here to doing it through somebody else, and finally when we evolved the Schroder Rockefeller set-up they agreed to do it through them, so long as Schroder Rockefeller gave them the return on the earnings they made from underwriting in the Standard Gas system.

Mr. NEHEMKIS. And what was the return which Schroderock was to pay to Schrodrpriv?

Mr. FULLER. Schrodrpriv as agent?

Mr. NEHEMKIS. Yes.

Mr. FULLER. As I recall, it was about one-tenth of 1 percent on the face value of an issue.

¹ "Exhibit No. 1964."

Mr. NEHEMKIS. And have such payments been made in the past?

Mr. FULLER. That agreement was outstanding for about 5 months, as I recall, and two payments were made under it.

Mr. NEHEMKIS. And do you recall approximately when those payments were made?

Mr. FULLER. They came after the Louisville issue and the Oklahoma Gas & Electric issue which were August and December '36, respectively.

Mr. NEHEMKIS. Do you know whether or not it is required under the registration statements that are filed with the Securities and Exchange Commission to report such payments or similar payments?

Mr. FULLER. We were advised by counsel at the time that these particular payments were not required.

Mr. NEHEMKIS. May I inquire at this time the name of counsel who so advised?

Mr. FULLER. Our counsel is Sullivan and Cromwell.

Mr. NEHEMKIS. Did they render a legal written opinion that such payments were not required to be reported to the Commission?

Mr. FULLER. I don't recall whether it was in writing or not.

Mr. NEHEMKIS. Will you be good enough to make available that information to this committee by a letter when you have the leisure to ascertain that fact?

Mr. FULLER. Yes.¹

SUMMARY OF THE RECORD BY COUNSEL—COMMENTS BY MR. EMANUEL

Mr. HENDERSON. Mr. Nehemkis, I must confess that I am a little bewildered by the rapid introduction of evidence here. Somewhere after the loan went under water, I went under water, too, and I wonder, for my benefit, before we go any further, if you couldn't start back with that financing of U. S., and bring it down to date.

Mr. NEHEMKIS. To put it very simply, and to rush over a vast amount of detail which I can't put quite as precisely as one would like to, the situation, briefly, is this: Back in 1928, a much younger man, Victor Emanuel became acquainted with an European capitalist and financier, one Captain Alfred Loewenstein, who had investments in various utilities and other enterprises all over the Continent, and Mr. Emanuel and Captain Loewenstein sat down together and decided that that was a good time to buy into American utilities. So they worked out a scheme of acquiring control of Standard Gas & Electric, American Water Works, and another utility. Had one devil not intervened at that time, namely, the depression, it would appear from the evidence that Mr. Emanuel and Captain Alfred Loewenstein might have controlled the utility system of this country. But unfortunately for those plans, there was a thing called the depression, and some of the plans went awry. However, the program was carried out pretty much with reference to the acquisition of the Standard Gas system, and the committee will recall from the testimony of the first witness that the Standard Gas system was an empire worth fighting over, there were assets in that empire of about a billion dollars, with property scattered throughout the United States and Mexico. Now, the problem, of course, of getting control of that utility empire centered

¹Mr. Fuller, under date of January 24, 1940, submitted the information requested. It is included in the appendix on p. 13017.

about acquiring the stock held largely by the Byllesby interests, and you recall that the testimony showed this morning that Mr. Emanuel worked out a series of legal moves, stockholders' suits were brought, mandamus proceedings were instituted, all in an endeavor to acquire this stock from the Byllesbys, who had the crucial position.

The alignment of interests both at home and abroad were too great for the Byllesbys, and finally they capitulated to Mr. Emanuel's interests and Mr. Loewenstein's interests, who by that time had fallen out of an airplane when it was crossing the British Channel.

Well, the depression, as I say, came along and even Standard Gas & Electric Co. found itself in difficulties. I should, however, retrace one step. It was necessary at this time to take care of a banking house by the name of Ladenburg, Thalmann, that always had a rather important place in the financing and it was as a result of this necessity that the difficulties arose, because a certain cash payment had to be made to this banking firm, and in order to raise cash, borrowings had to be made from some of the banks.

As a result of borrowing from these banks, stock was pledged with the banks, and subsequent battles centered around the recapture of this pledged security, and you will recall that earlier this morning there was introduced in evidence a banking agreement¹ that was evolved after the first battle had taken place. You will recall that the evidence shows that the financing followed very closely the terms of that banking agreement.

Mr. HENDERSON. That was between the Byllesby group and what you might call the Emanuel group.

Mr. NEHEMKIS. That is correct; substantially, yes, that is the situation.

Following the pledging of the stock with the New York banks, as the testimony has shown this afternoon, a long, protracted struggle took place in which Mr. Emanuel bended every effort to raise cash in order to obtain and repossess that pledged collateral, because the secret to the Standard Gas system rested with whoever had ownership or could reduce to possession the pledged collateral. You will recall, sir, from the evidence that Mr. Harrison Williams at this time became interested in possibly buying this pledged collateral.

Finally, the collateral was obtained by Mr. Emanuel's group, and always the big stake in this empire was the future financing, whether or not 75 percent of this utility empire's financing would fall to the interests represented by Mr. Emanuel and the European group.

Now, for various legal difficulties and complexities, Schroedpriv. the London house, couldn't very well participate in American underwriting activities, and in order, however, for Schroedpriv's American house, Schrobanco, to get its full reciprocity out of this 75 percent financing that they were buying into, as Mr. Fuller has previously testified, a new investment banking firm was organized, Schroder Rockefeller & Co. And Mr. Fuller has just testified as to where that stock is held, some of it held in London, some by the Rockefeller interests, some here.

Some of the previous charts that have been offered in evidence show the various percentage participations of the investment banking houses that belong to the various groups lined up in this situation and how that financing followed the terms of the original banking agreement.

¹ "Exhibit No. 1931."

That is about where we are at the present moment.

Mr. HENDERSON. Do you have anything to say?

Mr. EMANUEL. I would like to correct that: In the first place, I met Captain Loewenstein in 1926, not 1928. In the second place he already owned a large block of Standard Gas and large blocks of stock in a number of other American companies, four or five, as I recall. I made one proposal to him, I remember, about acquiring other companies and forming a company to do that. I believe I testified that he was not interested in that, and that whole thing fell when he died in 1928, although I might have talked to Fisher about it, who succeeded him early in 1928. Also, Captain Lowenstein died before the depression came on by well over a year.

There was only one legal move that I recall that we ever made, and that was a mandamus proceeding which I recall it was just to get information. We did make a demand on the directors, but I don't think that was legal, I mean in a court.

Mr. HENDERSON. Eventually what resulted then was your counsel and the other counsel got together and you got—

Mr. EMANUEL (interposing). And there was a settlement of all of our differences, which did not give me or Usepco control of Standard Gas; we didn't mention it, or we had no power of initiation; we merely had power to pass upon certain matters.

Mr. HENDERSON. How about the directors?

Mr. EMANUEL. We had a minority of the board of Standard Gas and they had the majority.

Mr. HENDERSON. How about the principal officers?

Mr. EMANUEL. The principal officers were all people who were officers of Standard Gas before; we had no officers.

Mr. HENDERSON. How about the management contract?

Mr. EMANUEL. That stayed in the Byllesby Engineering & Management Corporation, which was a wholly owned subsidiary of Standard Gas.

Mr. HENDERSON. How about the financing?

Mr. EMANUEL. Byllesby had 25 percent, which I think was based upon their historical interest in the business, and Usepco had the right to designate 75 percent.

Mr. HENDERSON. And what collateral was really posted with Chase?

Mr. EMANUEL. Everything we had was eventually put up.

Mr. HENDERSON. Mainly Standard Power?

Mr. EMANUEL. And that included the large block of Standard Gas and Electric stock owned by Standard Power.

Mr. HENDERSON. And it was recognized that even though that was pledged before the bank reduced its possession, the finance contract, 75-25, still continued.

Mr. EMANUEL. Yes, that still was in existence. I would like to say there that that was a memorandum, right at the time it was made; the counsel for Usepco, which was Seibert & Riggs, advised us, and it is on the minute books of the Usepro, that that agreement was of no legal force or effect.

Mr. HENDERSON. If you had an economist or financier and he looked back over the record, he would say it had a financial and economic effect, would he not?

Mr. EMANUEL. That is right, but what I am trying to point out, it wasn't an agreement enforceable in law, because it would have been

binding future actions of boards, which we cannot do, and also most of the financing was in the subsidiary companies which financing had come up before the respective boards of these companies, and also for the most part be approved by the various Public Service commissions.

Mr. HENDERSON. But in this attempt to get the stock out from under water, it was pretty generally recognized that the old 75-25 would still obtain.

Mr. EMANUEL. I was trying to get this collateral back for the Usepco itself. During this entire period the company was in trouble, every plan was to get it back for the company until the Founders' group distributed their stock and Mr. Fisher died. When that happened, it became apparent that I couldn't do it for the company because the Founders group had a majority of its stock I think of Usepco by that time, and without their support, it seemed impossible, so the best thing I could do was to use every means at my command, which I admit I did, to try and sell my people—

Mr. HENDERSON (interposing). I am not sure that we got all of the testimony today.

Mr. EMANUEL. I did nothing else for years but try to do this, and I used every means at my command to try and save something for the stockholders, which finally resulted in the agreement of 1936, whereby we paid the banks \$3,500,000 for the collateral, and then as soon as we could, because the stock wasn't registered, we offered it to the United States stockholders at the same price at which we paid without any commission whatsoever.

Mr. HENDERSON. Who finally bought it?

Mr. EMANUEL. I think, Mr. Henderson, that something over a third of the stockholders bought the stock. The offer expired on a certain day, but we just extended that thing by letting any stockholders who came in later buy their pro rata share. The stock then went up in the market and quite a few came in, and every time we felt they were bona fide stockholders who had bought their stock before this period came on, and not for as few cents a share as the worth of the security, we let them have the stock.

Mr. HENDERSON. The stock did get down to a few cents a share, did it not?

Mr. EMANUEL. The United States Electric stock after the collateral was reduced by possession was worthless, but it appeared it still was being sold by unscrupulous people for a few cents a share.

Mr. HENDERSON. There was a good gamble, however.

Mr. EMANUEL. There was no gamble then because the company had no assets.

Mr. HENDERSON. But it did have something which if you could—

Mr. EMANUEL (interposing). If you could send it in and get this other stock for it.

Mr. HENDERSON. Mr. Fuller, have you any comments?

Mr. FULLER. I don't think I have anything to add, unless there are some further questions.

Mr. NEHEMKIS. Just a few more questions.

Senator KING. Do you assent, with the exception you made, to the résumé made by Mr. Nehemkis?

Mr. EMANUEL. Yes.

Senator KING. I regret I have been in the Finance and Judiciary Committees all morning and it was impossible for me to be here.

Mr. HENDERSON. I think we are ready to go on.

THE GROUP PURCHASING NOTES AND COLLATERAL—CONTINUING EFFECTIVENESS OF BANKING MEMORANDUM OF DECEMBER 1929

Mr. NEHEMKIS. Mr. Fuller, we were saying earlier in connection with your direct testimony that a new group had entered into the picture, the Bancamerica-Blair people. Do you recall that?

Mr. FULLER. Yes.

Mr. NEHEMKIS. I show you a memorandum which was obtained from the files of Schroder Rockefeller and I ask you to tell me whether you recognize this to be a true and correct copy of an original in your possession.

Mr. FULLER. Yes; I identify it.

Mr. NEHEMKIS. Can you tell me who Mr. E. G. Diefenbach is?

Mr. FULLER. At that time he was vice president of the Bancamerica-Blair Corporation.

Mr. NEHEMKIS. This is what Mr. E. G. Diefenbach had to say after his people had come into the picture [reading from "Exhibit No. 1965"]:

On May 20, 1936 J. Henry Schroder Banking Corporation, Bancamerica-Blair Corporation, W. C. Langley & Co., A. C. Allyn & Co., Inc., and Emanuel & Co. purchased from the Chase National Bank of the City of New York, Guaranty Trust Co. of New York and Chemical Bank and Trust Co., \$12,500,000 Notes of the United States Electric Power Corporation, secured by—

And then he lists the various stock that had been pledged and which was now out of pledge.

He continues:

United States Electric Power Corporation had an agreement with H. M. Byllesby & Co. which gave them a first call on 75% of the financing of the Standard Gas & Electric System. H. M. Byllesby & Co. agreed to continue this financing arrangement with the new group which purchased the Notes of the United States Electric Power Corporation, secured by Standard Power & Light Common Stock, from the three New York banks. The purchasers of the Notes agreed that their interest in this finance contract should be on the same percentage basis as their interest in the purchase of United States Electric Power Notes.

I offer in evidence the document so identified by the witness.

(The memorandum referred to was marked "Exhibit No. 1965" and is included in the appendix on p. 12894.)

Mr. NEHEMKIS. So that after the shooting was over, the battle had subsided and the captains had retired, what was really at stake here in this struggle that had taken place over the years was the acquisition of 75 percent of the financing of the Standard Gas system. Is that correct, Mr. Emanuel?

Mr. EMANUEL. Not from my standpoint. I have no doubt that that was one of the considerations. Some of the other members of the group joined the so-called rescue party. It was never with me any primary consideration. It was one of the considerations, though, that undoubtedly helped me raise the money.

Mr. NEHEMKIS. Mr. Fuller, will you be good enough to examine a copy of a cablegram from Schrodpriv under date of January 6, 1936, and tell me whether you recognize this to be a true and correct copy of the original in your possession?

Mr. FULLER. I identify it.

Mr. NEHEMKIS. And Mr. Emanuel, will you glance at the photostat copy of what purports to be a cable from you to Robin Wilson in Paris under date of January 6, 1936, and tell me whether you recognize this to be a true and correct copy of an original that you are familiar with and that was sent by you?

Mr. EMANUEL. It was sent by me.

Mr. NEHEMKIS. Mr. Fuller, there appears to be on the lower left hand margin of this cable from Schrodpriv certain pencil notations. Before I offer the document in evidence, will you be good enough to read to me what those pencil notations are?

Mr. FULLER. It says [reading from "Exhibit No. 1966"]:

Copy to Mr. Emanuel, also Mr. Dulles.

Mr. NEHEMKIS. And Mr. Dulles is Mr. Allen Dulles, your counsel?

Mr. FULLER. Yes.

Mr. NEHEMKIS. Now, on January 6, 1936, Schrodpriv inquired of Schrobanco as follows [reading from "Exhibit No. 1966"]:

Please arrange with Victor Emanuel joint consultation with Sullivan & Cromwell and enquire whether they foresee any serious legal difficulties in our USEPCO programme.

You may recall, Mr. Emanuel, I used the word "program" this morning. I think I got it from this cable.

And one of the points they wanted Schrobanco to enquire about of Messrs Sullivan and Cromwell of eight points enumerated was the following, which is point 8 [reading further from "Exhibit No. 1966"]:

How binding a contract can be made assuring 75% future group financing to Emanuel and Hydro.

And then your cable, Mr. Emanuel, to Robin Wilson, care of Major Albert Pam, at the Hotel Menrice, Paris [reading from "Exhibit No. 1967-1"]:

Fuller communicated to me your cable sixth stop. Difficulty arises in that Sullivan and Cromwell counsel for First Boston and Langley who for reasons you understand do not want know about this now stop. Fuller having confidential talk with Dulles first this morning and if they see their way clear act confidential basis we will have joint meeting this afternoon stop.

I ask leave of the committee at this time to call Mr. Allen Dulles to the witness stand. Mr. Dulles, will you be good enough to take the witness stand, please?

Acting Chairman WILLIAMS. Do you solemnly swear that the evidence you are about to give in the matter now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DULLES. I do.

TESTIMONY OF ALLEN WELCH DULLES, SULLIVAN & CROMWELL, NEW YORK

Mr. DULLES. Mr. Examiner, as I mentioned to you, I have acted, as these papers indicate, in the capacity of counsel. I want to be of help in any way I can to the committee. I don't know whether the question of professional privilege is going to arise or not.

So far as Mr. Fuller is concerned, I think he has been very glad to waive it. There may be other matters that come up on which Mr.

Fuller cannot waive the privilege, and I want to make that statement and I hope we can avoid the question arising.

Mr. NEHEMKIS. Will you, so that we may proceed in an orderly fashion, state your full name and address?

Mr. DULLES. Allen Welch Dulles.

Mr. NEHEMKIS. And are you not a partner in the firm of Sullivan & Cromwell?

Mr. DULLES. I am.

Mr. NEHEMKIS. How long have you been a partner in that firm, Mr. Dulles?

Mr. DULLES. About 10 years.

Mr. NEHEMKIS. And, as the testimony has shown this afternoon, you have had fairly intimate knowledge of many of these transactions, have you not, sir?

Mr. DULLES. Well, I wouldn't say fairly intimate. I have had knowledge of certain phases of them; yes. I have been consulted now and again, but I wouldn't say I had intimate knowledge of the transactions.

Mr. NEHEMKIS. And your firm represents, does it not, the J. Henry Schroder Corporation, of New York, which we have been referring to as Schrobancro?

Mr. DULLES. It does.

Mr. NEHEMKIS. And does not your firm also represent other members of the American group, for example, The First Boston Corporation?

Mr. DULLES. Well, how do you include them as members of the American group? We have done considerable work for The First Boston Corporation; yes.

Mr. NEHEMKIS. I mean when I say members of the American group, members of that group who were aligned with Mr. Victor Emanuel in the financing and in connection with the various events that have been testified to this morning and this afternoon. Incidentally, have you been in the room this morning and this afternoon?

Mr. DULLES. I have been in the room this morning; yes.

Mr. NEHEMKIS. And you have heard the testimony?

Mr. DULLES. I have heard the testimony today; yes.

Mr. NEHEMKIS. Does my explanation clarify to you what I meant by the American group?

Mr. DULLES. I don't recall The First Boston having been identified as a member of the American group. I know that they have done a certain amount of financing in the Standard group system, but I didn't know that they were a member of the so-called American group, if you mean the group that purchased the notes.

Mr. NEHEMKIS. Do you recall that Harris, Forbes & Co. and its allied interests were associated with this deal?

Mr. DULLES. Which deal, Mr. Examiner?

Mr. NEHEMKIS. I am talking about the transaction that began in 1928 and was consummated in 1936, as we have been hearing testimony on it this afternoon and this morning.

Mr. DULLES. Well, I know nothing about that, except hearsay, insofar as any relationship they had in this picture.

Mr. NEHEMKIS. Does your firm represent Langley & Co.?

Mr. DULLES. No, it does not.

Mr. NEHEMKIS. I had occasion a moment ago—

Mr. DULLES (interposing). I think we have done some work occasionally for Langley, not in this connection.

Mr. NEHEMKIS. I had occasion a moment ago to ask Mr. Fuller to identify a cable from the J. Henry Schroder Co. of London to Schrobancro in New York, in which the following question was asked and the request made that legal advice be obtained from your firm [reading from "Exhibit No. 1966"]:

How binding a contract can be made assuring 75% future group financing to Emanuel and Hydro.

And I had occasion to ask Mr. Emanuel to identify a cable from him on January 6, the same date as this cable to which reference has just been made, to Mr. Robin Wilson. Mr. Emanuel cabled Mr. Wilson as follows [reading from "Exhibit No. 1967-1"]:

Fuller—

Mr. Carlton Fuller who sits at your side—

communicated to me your cable sixth stop Difficulty arises in that Sullivan and Cromwell counsel for First Boston and Langley who for reasons you understand do not want know about this now stop Fuller having confidential talk with Dulles first this morning and if they see their way clear act confidential basis we will have joint meeting this afternoon.

It is with reference to these two documents that I am now asking my questions. You have indicated your answers and I don't want to retrace them with you. Can you clarify that cablegram and the references made therein?

Mr. DULLES. As I recall, we desired to talk with The First Boston Corporation, whom we had represented in connection with certain of the earlier financing, to see whether we were free to discuss the matter with Mr. Fuller or whether they were still interested. As I recall, the answer came from The First Boston Corporation that they were not at this time interested and that we were free. That is my recollection.

Mr. NEHEMKIS. To discuss it with Mr. Fuller?

Mr. DULLES. To discuss it with Mr. Fuller and Mr. Emanuel, yes.

Mr. NEHEMKIS. But you do recall, then, according to your present testimony, that The First Boston Corporation was interested in this whole larger transaction?

Mr. DULLES. We did not know whether they were interested or not. I don't think they were interested in the purchase of the notes, in the reduction of the collateral.

Mr. NEHEMKIS. Now, Mr. Emanuel, may I ask you at this time whether you can clarify the meaning of this statement which you wrote to Robin Wilson [reading from "Exhibit No. 1967-1"]:

Difficulty arises in that Sullivan and Cromwell counsel for First Boston and Langley who for reasons you understand do not want know about this now.

Do you recall what you meant?

Mr. EMANUEL. I don't recall what I referred to. I would like to say this about that cable, that Emanuel is used as a name, I am sure Schroder Co. didn't mean me personally.

Mr. NEHEMKIS. It is a code name?

Mr. EMANUEL. I mean—I think I have to explain something about it—that Emanuel & Co. was always a small house and never came into this financing until 1935, 5 or 6 years after this company was

formed. Emanuel I think they use broadly to mean the American group which was composed of a number of houses other than Emanuel & Co., who had just a small interest when they did have any interest in this financing.

I think I remember the last part of the cablegram.

Mr. NEHEMKIS. What did you mean by "Fuller having confidential talk with Dulles"?

Mr. EMANUEL. I meant prices.

Mr. NEHEMKIS. The stock market prices at the time?

Mr. EMANUEL. What I was afraid of was that if the indicated market value of Standard Gas securities went up I wouldn't raise enough money.

Mr. NEHEMKIS. Mr. Fuller, do you remember having a talk with Mr. Dulles about the situation referred to in the cable?

Mr. FULLER. Yes.

Mr. HENDERSON. Mr. Emanuel, you don't know what this cable means when it says [referring to "Exhibit No. 1967-1"] "for reasons you understand"?

Mr. EMANUEL. I can't recall, Mr. Henderson, what was meant.

Senator KING. You drafted the telegram, did you?

Mr. EMANUEL. I think I did; yes.

Senator KING. Was anybody else conferring with you simultaneously?

Mr. EMANUEL. I think almost everybody concerned was. It might have meant difficulties of reoffering this Standard stock to the United States Electric shareholders without a registration statement. I know that was one of the things that were troublesome at that time.

ENFORCEABILITY OF THE 75-25 PERCENT AGREEMENT FOR FUTURE FINANCING

Mr. NEHEMKIS. Mr. Dulles, was not one of the pressing questions which the London firm wanted your firm's opinion on, whether the 75 percent agreement was binding legally and enforceable at law?

Mr. DULLES. That was one of the questions that was in that telegram that you have introduced in evidence, which was presented to us at this conference Mr. Fuller has mentioned.

Mr. NEHEMKIS. Did your firm render an opinion on that question?

Mr. DULLES. I don't believe we rendered any opinion. My best recollection is that we discussed it with Mr. Fuller and Mr. Fuller drew up his cable on the basis of that discussion.

Mr. NEHEMKIS. Is it not a fact, Mr. Dulles, that your firm, and perhaps you in particular, felt it inadvisable at that time to render written opinion, but preferred to make your opinion oral?

Mr. DULLES. I think lawyers always, when they can render oral opinion, prefer it to rendering written opinions.

Mr. NEHEMKIS. Although when we render written opinions, since I, too, am a lawyer, I know we sometimes get paid more. But the fact remains you rendered an oral opinion at the time.

Mr. DULLES. That is my recollection; yes.

Mr. NEHEMKIS. Did you not have some particular reason why you felt under the circumstances you preferred to render an oral opinion rather than a written opinion?

Mr. DULLES. I don't recall it; no.

Mr. NEHEMKIS. I offer these cablegrams in evidence.

Acting Chairman WILLIAMS. They may be received.

(The cablegrams referred to were marked "Exhibits Nos. 1966 and 1967-1," and are included in the appendix on p. 12895.)

Mr. NEHEMKIS. Pursuant to the advice you obtained from Mr. Dulles, Mr. Fuller, did you not advise Schroderpriv?

Mr. FULLER. I believe I did.

Mr. NEHEMKIS. I show you a telegram from Schrobancò to Major Pam at Paris, under date of January 7, 1936. Will you be good enough to glance at this cable and tell me whether you recognize it as a true and correct copy of an original? And by the way, will you tell me who Major Pam is?

Mr. FULLER. Major Pam is associated with J. Henry Schroder & Co. in London, with power to sign the firm's signature. I identify it.

(The cablegram referred to was marked "Exhibit No. 1967-2" and is included in the appendix on p. 12896.)

Mr. NEHEMKIS. May I have the document? I think I requested that Mr. Fuller identify it. The cablegram reads as follows:

Sullivan and Cromwell have following comments your particular inquiries.

And then you itemize them from 1 through 8, and under 8 you reported as follows:

They consider contractual control of financing unfeasible and undesirable but agree with Emanuel that real source of control would be Hydro's holdings and the majority on the directorate plus an agreement and good relations with Byllesby.

Mr. Dulles, is that substantially in conformity with your understanding at this time of what transpired in the nature of the advice rendered Mr. Fuller?

Mr. DULLES. I don't remember, but I have no doubt if Mr. Fuller put that in a cablegram at the time that represented his understanding of the advice I gave him.

Mr. NEHEMKIS. Can you enlighten us at this time as to what you had in mind when you referred to an agreement?

Perhaps I had better show you the particular paragraph. You will find it enumerated under 8 on page 2 of the document I now show you.

Mr. DULLES. As far as I can read back my thoughts at the present time, presumably that was not any written agreement because I apparently advised that a written agreement or anything that purported to be in a contractual form was both unfeasible and undesirable.

Mr. NEHEMKIS. May I interrupt at the moment and ask, since we have been spending a great deal of time on these so-called agreements, treaties, contracts, that investment bankers enter into, why you, a lawyer of many years' standing, felt that such an agreement was undesirable—I think that is the word in the cable.

Mr. DULLES. Well, I think anything that purports to be a contract but is not really a contract, something that is entirely unenforceable, something that relates to the disposition of something you do not control, has no real value as an agreement, and therefore, as a lawyer, I would oppose my clients—I believe—entering into that type of so-called contractual agreement which really was no contract at all.

Mr. HENDERSON. May I ask a question there? Is your firm counsel for Goldman, Sachs?

Mr. DULLES. They are.

Mr. HENDERSON. Is it counsel for Lehman Bros.?

Mr. DULLES. They are, in certain matters.

Mr. HENDERSON. Are you aware that they reduced their understandings on the matter to a treaty?

Mr. DULLES. I have seen it in the paper recently. I knew nothing about it at the time.

Mr. NEHEMKIS. You didn't yourself pass on it?

Mr. DULLES. No.

Mr. NEHEMKIS. And if you had passed on it you probably would have said about the same thing said here, "not feasible"?

Mr. DULLES. Well, certainly if I were looking at it from the point of view of today I would; whether I would have been wiser in those days or not I can't say.

Acting Chairman KING. Your idea was that it would be unfeasible to have a written contract as to property that you didn't control?

Mr. DULLES. That would be one of my reasons, Senator.

Mr. NEHEMKIS. Or property that was not owned, Mr. Dulles?

Mr. DULLES. Property not owned?

Mr. NEHEMKIS. Yes.

Mr. DULLES. Property you could not dispose of; yes.

Mr. NEHEMKIS. Either through control or ownership?

Mr. DULLES. Yes.

Mr. NEHEMKIS. Do you recall, Mr. Dulles, that in connection with the agreement that Mr. Commissioner Henderson referred to, operating between Lehman Bros. and Goldman, Sachs, that the form of that agreement was passed on by your firm?

Mr. DULLES. I didn't recall that.

Mr. NEHEMKIS. Such is the testimony before this committee. A deceased partner of your firm——

Acting Chairman KING (interposing). Are we going into the Goldman, Sachs in this?

Mr. NEHEMKIS. No, sir; but we are discussing now the problem of the legal validity of the agreements, contracts, and treaties entered into by investment banking firms, and the testimony, in my opinion, of the witness to whom the questions are now being put is directly relevant to that subject.

Acting Chairman KING. They may be relevant on that, but not relevant—I am trying to ascertain whether or not you are offering that testimony as a part of the investigation of this corporation Mr. Emanuel is connected with.

Mr. NEHEMKIS. The question has arisen, sir, that Mr. Dulles had advised his client Schrobancro——

Acting Chairman KING (interposing). I know what he stated there. Is that what you mean?

Mr. NEHEMKIS. I wanted to know how it happened this firm passed on the form of another contract, when Mr. Dulles has just testified that he doesn't think these contracts are either feasible or desirable. I think that is a highly relevant question, I submit.

Acting Chairman KING. Perhaps it is; I have no objection.

Mr. DULLES. I am perfectly willing to say, Senator, that partners in law firms often differ, and maybe I am profiting here by hindsight. That is the way I view it today.

Acting Chairman KING. I understood you to testify that you knew nothing about that contract to which counsel referred in the Sachs, Goldman matter.

Mr. DULLES. Knew nothing whatever about it.

Mr. MILLER. Mr. Nehemkis, may I ask Mr. Dulles a question? I am not clear in referring to this agreement, the opinion requested by Mr. Fuller, who was that agreement to be between? Who were to be the parties to the agreement that he contemplated?

Mr. DULLES. I assume that the parties to that agreement would have been someone representing Hydro-Electric Securities Corporation, or acting for them, and other possible American underwriters of the subsidiaries of the Standard Electric Co., Standard Gas.

Mr. MILLER. Well, would the agreement with the Hydro-Electric Securities company be with them, because they were owners of stock of Standard Power?

Mr. DULLES. That was the theory in those days; yes.

Mr. MILLER. In other words, it was an agreement with the chief stockholder?

Mr. DULLES. Agreement with a substantial stockholder; not the chief.

Mr. MILLER. Not just an agreement between banking houses?

Mr. DULLES. Well, it might be an agreement between the banking-house, let us say, which Hydro might designate as its bankers. That, I think, is a possibility.

Mr. NEHEMKIS. Mr. Miller, may I interpose? I have passed to you a copy of the agreement. It is that agreement concerning the legal validity of which that the question was asked of Messrs. Sullivan and Cromwell, Mr. Dulles.

Mr. DULLES. Mr. Examiner, may I say here that I am speaking as an individual when I give you my personal opinion of what I think of an agreement or its feasibility or unfeasibility. It is quite possible that some of my partners would differ from the views I express here, and I don't purport to bind them or express their views.

Mr. NEHEMKIS. That is generally characteristic of the legal profession.

Mr. MILLER. Mr. Nehemkis, this agreement here is of December 21, 1929.¹ I thought this was a new agreement that was contemplated that Mr. Fuller talked to Mr. Dulles about, not this agreement.

Mr. NEHEMKIS. What is your testimony on that?

Mr. FULLER. I was considering the possibility of a new agreement at the time of the 1936 deal.

Mr. NEHEMKIS. But the original agreement that Schroedpruv wanted to know whether or not it was enforceable, and which they requested you to ascertain advice of counsel, was this agreement?

Mr. FULLER. Whether that or any similar one could be.

Mr. NEHEMKIS. That was not the question in the cable.

Mr. FULLER. I have forgotten the cable, then.

¹ "Exhibit No. 1931."

Mr. O'CONNELL. Will you read the cable provision? I am not clear between whom this agreement would be.

Mr. NEHEMKIS. The cable is in the record; Witness Briggs testified this morning with reference to committee "Exhibit No. 1931," that the contract dated December 21, 1929, was entered into on that date and was executed by H. M. Byllesby & Co. by J. H. Briggs, United States Electric Power Corporation, which we have been referring to here as Usepco, and signed by Victor Emanuel, and Ladenburg, Thalmann & Co. by Walter Rosen, a general partner.

Now it was this contract that we have been referring to as giving the 75-25 rights. Now, the London people had put a considerable amount of money into this thing; they wanted to know whether they were buying a piece of paper or something that was legally enforceable, and so they cabled to their American house, Schrobancro, and said, "Get in touch with our counsel and find out whether this is just a piece of paper, or whether we are buying something that has a legal and binding contractual effect," and, as I understand the evidence, counsel advised Schrobancro—by counsel I refer to Messrs. Sullivan and Cromwell—that they didn't think it was legally binding, but that it had a certain moral effect, and as the evidence will show in a few moments, we will come into the actual interpretation that was placed upon it by Sullivan and Cromwell. At least, such is my understanding of the evidence, Mr. O'Connell.

Mr. O'CONNELL. Is that your general understanding of the question put to you in 1936?

Mr. DULLES. Not quite. It was my understanding as to whether any agreement of this kind could be concluded which would be binding as to the future.

Mr. O'CONNELL. An agreement between underwriters?

Mr. DULLES. Between underwriters to control a certain percentage of financing.

Mr. O'CONNELL. And when you advised your client that in your judgment such an agreement was not feasible, or what was the other word used?

Mr. DULLES. Desirable.

Mr. O'CONNELL. Desirable; you had in mind it was in the nature of a legal opinion that such a contract would be unenforceable?

Mr. DULLES. Quite.

Mr. O'CONNELL. You didn't think such an agreement would have any legal effect?

Mr. DULLES. Quite.

Mr. EMANUEL. I think I could facilitate this by saying that as I recall the agreement of December 21, 1929 (referring to "Exhibit No. 1931"), was by its terms not transferable, so if any agreement was being discussed it was probably a new agreement.

Mr. NEHEMKIS. Mr. Fuller; I beg pardon, Mr. Dulles, is Mr. Crispell an associate of yours?

Mr. DULLES. Partner.

Mr. NEHEMKIS. Partner of Sullivan & Cromwell. On or about March 10, Mr. Fuller, did you have occasion to consult Mr. Crispell in regard to the contract here in question and other agreements?

Mr. FULLER. Sometime in that period; yes.

Mr. NEHEMKIS. I show you a memorandum dated March 10, 1936, addressed to Messrs. Beal and Simpson, your associates, from your-

self, and ask you to tell me whether that is a true and correct copy of such memorandum in your possession. Will you examine this and tell me whether you recognize that as a memorandum which you drafted or dictated, as the case may be?

Mr. FULLER. Yes.

Mr. NEHEMKIS. Now, following your discussion with Mr. Crispell, Mr. Dulles' partner, you wrote to your associates, Messrs. Beal and Simpson, as follows [reading from "Exhibit No. 1968"]:

Mr. Crispell was very cautious and reserved because he has commitments to so many interests in this situation, and he would not discuss the terms of the agreements at all without clearing with all his principals, who include others besides Victor Emanuel. I told him if it became necessary to get an official opinion from Sullivan & Cromwell, we might later approach him to get a clearance, but for the time being our telephone conversation would suffice.

He says that the two gentlemen's agreements—

Now, can you tell me to which two gentlemen's agreements reference is made here?

Mr. FULLER. I assume the one you have been referring to.

Mr. NEHEMKIS. December 21, 1929, being committee "Exhibit No. 1931"?

Mr. FULLER. Yes. I don't know what the other one was unless there was some parallel document at the time.

Mr. NEHEMKIS. Neither do I, and that is why I was somewhat puzzled as to what the reference to the two agreements is. Shall we assume—

Mr. FULLER (interposing). You must remember at this time I had never seen these agreements, and I may have been mistaken in interpreting his conversation as to there being two, and they might have been all in one.

Mr. NEHEMKIS. Am I correct in assuming this is it? (Holding up "Exhibit No. 1931.")

Mr. FULLER. Yes.

Acting Chairman KING. Had you seen the agreement at that time?

Mr. FULLER. I don't think so; we had not seen it.

Acting Chairman KING. Do you know its contents?

Mr. FULLER. I knew there was such an agreement, and I knew what it was about. I may have seen it; about this time the new deal came along.

Senator KING. Have you any recollection whether you had seen it at that time you made the memorandum to which counsel has referred?

Mr. FULLER. I don't offhand; I don't think I had.

Mr. NEHEMKIS. I repeat the early part of that sentence that [reading from "Exhibit No. 1968"]:

the two gentlemen's agreements are not legally binding, as we already understand, but that they have worked perfectly and will continue to do so as long as they are between people who have confidence in each other and who wish to play ball. In general such agreements have been difficult to enforce.

May I pause for a moment and ask you, Mr. Dulles, are you familiar with many such agreements that are operative or that have been entered into between investment banking firms?

Mr. DULLES. Not recently; no. I knew of certain in the days 1928, 1929, and 1930; I don't know that I could recall many by name.

Mr. NEHEMKIS. Were you in the room by chance this morning when I offered in evidence some 30 agreements¹ which have been entered into by investment banking firms with issuers at various times, some of which are still operative? In fact, I think the bulk are still operative, the rest of which have lapsed.

Mr. DULLES. I was in the room; I didn't know what the agreements were, but I heard the testimony.

Mr. NEHEMKIS. In your experience do you know of a single situation where there has ever been any litigation concerning such agreements?

Mr. DULLES. I don't recall any; no.

Mr. NEHEMKIS. I know members of my staff have been very much interested in that. We have been searching the reports to see if we could find a single instance where such an agreement had ever been brought to the courts for enforcement, and we can't find any such thing.

I now continue reading from your memorandum, Mr. Fuller.

Senator KING. You mean for enforcement or for breach.

Mr. NEHEMKIS. Or for breach. [Reading further from "Exhibit No. 1968":]

In general such agreements have been difficult to enforce, although he can conceive of such agreements being made and being enforced if based upon a definite long-term program of specific financing.

So that in this particular instance your partner, Mr. Crispell, did appear to indicate there was some possibility of such agreements being enforceable and having legal effect provided there was a long-term range in the financing.

However——

he continues——

since the latter would involve the question of price which obviously cannot be set long in advance, as a practical matter it is difficult to see how such a contract could actually be drawn up in practice.

The charter and by-law provisions of Standard Power and Standard Gas are presumably legal documents, which would stand regardless of the position of U. S. Electric, but some outside lawyers have questioned even that situation.

I offer in evidence, Mr. Chairman, the memorandum identified by Witness Fuller from which I have been reading.

Acting Chairman WILLIAMS. It will be received.

(The memorandum referred to was marked "Exhibit No. 1968" and is included in the appendix on p. 12896.)

NATURE OF AND PARTIES TO THE BANKING MEMORANDUM

Mr. O'CONNELL. I am not at all clear at all times we have been talking about the same type of contract. This most recent one, is it a contract between underwriters distributing future business of an issuer, or a contract between underwriters on one hand and issuer on the other?

Mr. NEHEMKIS. It is, sir, the former, a contract entered into—it is not altogether that, it is a contract between investment bankers and a utility company, the largest stockholder of the system. The company that we have been referring to here as Usepco. It combines elements of both.

¹ "Exhibits Nos. 1897-1925."

Mr. O'CONNELL. Combines elements of both; it is not strictly speaking a contract between underwriters or between underwriters and issuing corporations?

Mr. NEHEMKIS. That is my understanding.

Mr. O'CONNELL. Is that your understanding, Mr. Dulles? You seem a little perturbed.

Mr. DULLES. In this particular picture we are discussing, as I understand it, Usepco had dropped out at this time because when the notes were foreclosed, Usepco had no further assets and was a shell, and so any agreement with Usepco seems to me would be so far as Usepco was concerned, certainly a nullity and probably as regards all the parties.

Mr. O'CONNELL. It was a nullity before, as I understood you.

Mr. DULLES. Probably not a nullity, but unenforceable.

Mr. O'CONNELL. It remained unenforceable after Usepco lost the stock?

Mr. DULLES. What I understood was being presented to me here at this time, as to the best of my recollection after four years, was the question of a validity of an agreement between underwriters.

Mr. MILLER. In your opinion, was Usepco ever an issuer?

Mr. DULLES. No.

Mr. MILLER. Was it a utility company?

Mr. DULLES. How do you mean, issuer? It issued its own security; it didn't issue other people's securities.

Mr. MILLER. I mean an issuer in the sense that it was used by Mr. Nehemkis in referring to these contracts that were presented this morning, financing contracts with issuers, borrowers.

Mr. DULLES. I didn't catch that last.

Mr. MILLER. Mr. Nehemkis presented a group of agreements between banking houses and issuers, companies who did financing, and these bankers did the financing for them. Do you classify Usepco in that category?

Mr. DULLES. Not entirely. I may say that I am not at all familiar with these agreements involving Usepco, and when I gave my opinion here as to the invalidity and unenforceability of agreements, I was directing myself solely to agreements as among other underwriters to control some underwriting business.

Mr. FULLER. Perhaps I can clarify Mr. Miller's understanding by pointing out that Usepco never issued to the public any of its own securities that were underwritten. Does that help?

Mr. MILLER. Yes.

Acting Chairman WILLIAMS. Was it ever an underwriting company?

Mr. FULLER. In those days, or under the present definition of underwriter?

Acting Chairman WILLIAMS. At any time.

Mr. FULLER. In those days it was never considered an underwriter; no.

Acting Chairman WILLIAMS. I have had the impression here during all this time that here was an issuer on the one hand and the investment bankers or the underwriters on the other hand who signed this contract. That is the impression I have had from this testimony that has gone on here all the time about this agreement.

Mr. HENDERSON. As to the old agreement,¹ maybe counsel can tell us what flowed out of the agreement between Usepco and Byllesby. There was a 75-25 division. Who got the financing that flowed out of that?

Mr. NEHEMKIS. I introduced a table this noon which set that forth,² and if one of my assistants will give it to me, I can give you your answers very precisely, sir.

Mr. HENDERSON. You remember it, do you not?

Mr. NEHEMKIS. Generally speaking, the investment banking houses which benefited from the agreement entered into as of December 21, 1929, being committee "Exhibit No. 1931," with those banking houses that had associated themselves with the Emanuel interests.

Mr. HENDERSON. And had formed Usepco.

Mr. NEHEMKIS. And through various exchanges, and so on, had been instrumental in forming Usepco. For example, Ladenburg, Thalmann & Co. had a very potent interest in the earlier historical underwriting syndicates and you will recall the testimony shows that Ladenburg, Thalmann had to be bought out and cash was paid to them, and it was as a result of that heavy payment in cash that the Emanuel group ultimately got into difficulties because they had to pledge the collateral with the banks in order to get the cash to pay Ladenburg, Thalmann.

Mr. MILLER. You said Usepco was an issuer. It was the principal stockholder.

Acting Chairman WILLIAMS. My question was, who are these parties that signed this original agreement, whether they are investment houses, underwriters, or whether there is one of them an issuer and the other two are underwriters.

Mr. NEHEMKIS. I would say, sir, that the answer to your question is as follows: If I correctly understand the testimony—

Senator KING. Pardon me, I hope Mr. Fuller listens so we can get his views.

Mr. NEHEMKIS. H. M. Byllesby & Co. at the time it entered into this contract would be considered an investment banking house. Ladenburg, Thalmann & Co. at the time it entered into the contract would be considered an investment banking house. United States Electric Power Corporation, referred to throughout the testimony as Usepco, was a holding company that held the stock of underlying corporations, and was a signatory to the agreement. Now, it is true, Mr. Miller, that Usepco was not an issuer. The issuers were the underlying corporations, but as Mr. Miller well knows, the underlying corporations couldn't issue without the consent and approval of Usepco.

Acting Chairman WILLIAMS. It certainly was not an underwriter.

Mr. NEHEMKIS. No, sir; by no conceivable stretch of the imagination.

Senator KING. Is that your view, Mr. Fuller?

Mr. FULLER. From the time I have known much about this agreement I have always in my own mind, not being a party to it, you understand, considered it as an agreement amongst bankers and for convenience I thought that certain of the underwriting bankers'

¹ "Exhibit No. 1931."

² "Exhibit No. 1940."

interests were concentrated in Usepco, and I think you will cut through all of this by going down to the division under the Usepco percentage mentioned. In essence it was a banking underwriting arrangement rather than an issuer-banking contract, in my opinion.

Mr. NEHEMIS. Undereath Usepco you had Hydro.

Mr. FULLER. We had a whole group. As a matter of fact, I don't think Hydro participated in that financing at that time.

Mr. O'CONNELL. May I ask a question of Mr. Dulles? This is a question you may not be in position to answer, but I am curious to know whether in your experience you have ever had any occasion to pass on the enforceability of a contract for future financing over an indefinite period of time and without a very definite term between investment bankers and issuing concern.

Mr. DULLES. I recall one—I would rather not mention the name—where a banking house had an option on the financing of the particular issuer over a certain period of time. There were several issues by the banking house pursuant to that contract, and then the company desired to cancel it and it was canceled, as I recall, for a relatively small consideration. That is the only instance that I recall.

Mr. O'CONNELL. I was more interested in the general legal propriety of an issuing concern contracting for general future financing with a group of underwriters.

Mr. DULLES. It was done a good deal and there is a good deal to be said, I think, pro and con.

Mr. O'CONNELL. You mean speaking of the legality.

Mr. DULLES. As far as the legality is concerned, I think it would be very difficult to enforce such a contract because it isn't precise enough. There is no agreement as to the terms of the future financing, and if the particular banking house that has the contract with the issuer is not prepared to do the financing, and some other house is, it seems to me almost inconceivable that that banking house could enforce the contract and prevent the issuer from financing under those conditions.

Mr. O'CONNELL. If the terms were reasonably precise and a formula were set up for determining the price of the securities to be issued by the issuing house and the contract were entered into with the approval of a given board of directors for an indefinite period of time or for a given number of years, and assuming that the issuing house wished to change its banking connection and that the former banking connection wished to assert its right under such an agreement, do you have any opinion as to whether such an agreement would be enforceable?

Mr. DULLES. I could conceive that an agreement could be made for a first refusal which might be enforceable. That assumes, of course, that the banking house that the issuer approached, was ready and willing to do the financing on the same basis as anyone else would.

(Senator KING assumed the Chair.)

Mr. O'CONNELL. I heard something said some time, I think, during the hearing about whether or not a given board of directors could bind a corporation that they represent over such a period of time.

Mr. DULLES. On that point I think it is extremely doubtful as to whether one board of directors could bind the judgment of another board of directors for any long period of time. Of course, if all you

have is a first refusal, you haven't bound the company to anything very serious.

Mr. O'CONNELL. It is exactly the same situation as the one, I assume, in which the issuing house want to change their house, that the investment house want certain rights to its securities, because that is the same as the right to first refusal. It is exactly the situation that I assume because I am assuming the former investment house want to keep the connection so the refusal would be in effect exactly the same as the right to enforce the agreement.

I see no distinction between those two, do you?

Mr. DULLES. Except that the one contract might be bad for indefiniteness, whereas the first refusal contract might not be bad on that ground. It might well be as being an improper delegation of authority by assumption of authority by one board of directors.

Mr. O'CONNELL. That is the point I had in mind, that one you just mentioned.

"MORAL FORCE" OF THE BANKING MEMORANDUM

Mr. NEHEMKIS. About the time that we are discussing, Mr. Fuller, you had occasion to write a memorandum in which you set forth your understanding of these various agreements and the agreement in particular. I ask you to identify this memorandum for me, if you will.

Mr. FULLER. That seems to be from our files.

Mr. NEHEMKIS. You stated this, Mr. Fuller, as your understanding of these arrangements [reading from "Exhibit No. 1969"]:

Upon the formation of U. S. Electric Power Corporation, three agreements were entered into between H. M. Byllesby & Co. and Usepco, copies of which were in Mr. Fisher's possession. Only one of these is considered a legally enforceable, signed contract, under which Byllesby gives Usepco an option on its holdings of Standard Power & Light stock in case Byllesby wishes to sell. It includes a provision that if Usepco declines at the price offered, and Byllesby sells elsewhere, then Byllesby will execute an irrevocable proxy for the shares to Usepco.

The other two documents are merely gentlemen's agreements with no binding force in law, which was understood at the time of their negotiation. The one called the "Dividend Agreement" is signed by the parties and obligates them to confer on dividend policy, awards 50% of the system's bank deposits and all fiscal agency functions to Usepco's nominees, covers publicity, public relations, etc.

The other, called the "Financial Agreement," is merely initialed.

But you were in error about that as you have already testified because you had not seen the agreement, which was not initialed but which contains the signatures. [Reading further from "Exhibit No. 1969":]

It is this agreement which divides the financing 75% to Usepco and 25% to Byllesby, with certain other provisions.

And it is over that division of financing that the struggle that we have been describing this afternoon concerned itself, is that not correct?

Mr. FULLER. Yes; as I understand the question.

Mr. NEHEMKIS. [Reading further from "Exhibit No. 1969":]

While arrangements as to Standard Gas financing are thus not on a legally enforceable basis, they have worked without difficulty since 1929—

You were referring to these arrangements covered here? [Holding up "Exhibit No. 1931."]

[Mr. Fuller nodded in agreement.]

Mr. NEHEMKIS (continuing):

and are similar to many other such arrangements, all of which operate as long as the parties thereto are reliable.

I take it that at the time you wrote this, you were of your own knowledge familiar with other such arrangements, were you not?

Mr. FULLER. I am trying to recall any specific examples. I assume I was because it was fairly common knowledge.

Mr. HENDERSON. Were you relying on Mr. Crispell's advice?

Mr. FULLER. Not necessarily so. I think out of my own experience I had heard of such agreements, and I had certainly heard of them in foreign banking and other fields. Offhand I couldn't cite many examples.

Mr. NEHEMKIS. Of your personal experience, do you know of any instance where an agreement such as we have had occasion to discuss, which is not legally enforceable, but which has evidently moral effect, has ever been breached and where suit has been brought to enforce the terms of the agreement?

Mr. FULLER. I can't recall where suit has been brought to enforce the terms, but I recall an indirect breach of such contract in a foreign financial field where a certain house had a time agreement on the financing and the foreign state breached that by setting up its financing in such a way that technically it didn't come under the agreement, although it should have. There was no suit about it because you can't very well sue a foreign entity on such grounds.

Mr. NEHEMKIS. But you know of no instance where an agreement of this nature has been breached here in America?

Mr. FULLER. With the following suit?

Mr. NEHEMKIS. Yes.

Mr. FULLER. I don't recall offhand. Of course, I might explain from the banker's point of view I think I personally, and certainly a good many of my friends, feel these agreements are a good "foot in the door," a chance to negotiation. We never considered that it really gave us a firm hold on the business.

Mr. HENDERSON. Mr. Emanuel, at the time the loan was under water how did the bank regard this gentlemen's agreement?

Mr. EMANUEL. I don't recall that they particularly had any regard for it.

Mr. HENDERSON. Didn't they ask that while the loan was under water, any consideration of financing should be taken up with them and did not Usepco write a long letter to them explaining their understanding as to this?

Mr. EMANUEL. I can't presently recall, Mr. Henderson. It is quite possible, though. It is so long ago I can't recall.

Mr. HENDERSON. I can assure you that is the case, and if it gets important, I will introduce the document.

Mr. NEHEMKIS. Mr. Henderson, my associate calls—

Mr. EMANUEL (interposing). I don't say it isn't true.

Mr. NEHEMKIS. My associate calls my attention to a document which I had intended to offer a little later, but which bears on your point. This is the understanding of Smith, Barney & Co., concerning this whole arrangement, and they write as follows concerning the matter you have asked the witness:¹

¹ The memorandum referred to is included in the appendix on p. 13018.

General arrangements pursuant to which investment bankers are selected for companies comprising the Standard Gas & Electric Company System:

As of March 2, 1933, U. S. Electric Power Corporation had demand bank loans totalling \$12,500,000 (of which Chase National held 50% or \$6,250,000—and so on, they outline the bank holdings.

These \$12,500,000 U. S. Electric Power Corporation secured demand notes (dated March 1, 1933), were given to the three banks pursuant to a written agreement between U. S. Electric Power Corporation and the banks dated and executed on March 1, 1933, and all but a small part of them are still outstanding and unpaid.

Note the following paragraph, if you will, sir.

Among other things, that March 1 agreement contained a provision that U. S. Electric Power Corporation would furnish the banks with a certified list of all contracts to which they were then a party (except those covering ordinary current operations) and agree (so long as any of the \$12,500,000 demand notes remained unpaid) not to change any such contracts without the consent of the banks. The March 1, 1933 agreement also provided that U. S. Electric Power Corporation (recognizing that those contracts were assets which should be available to creditors) agreed in so far as possible to give the three banks the benefit of such contracts and pay over to them any consideration received by U. S. Electric Power Corporation therefrom.

And the following very important provision:

One contract covered by the foregoing provision is a Memorandum dated December 21, 1929—

This is the agreement we have been talking about—¹

signed by H. M. Bylesby & Co., U. S. Electric Power Corporation and Ladenburg, Thalmann & Co., which sets forth the manner in which the investment bankers to handle securities issues of the Standard Gas and Electric Company system are to be selected. Subject to certain exceptions (including particularly the financing of the Philadelphia Company and subsidiaries) the general arrangement contemplates that financing shall be undertaken as to interest and liability, at original cost, as follows:

U. S. Electric Power Corporation, 75%.

H. M. Bylesby & Company, 25%—

And that is the old 75-25 thing that I have been speaking about all afternoon and morning.

And then they continue as follows:

In connection with the March 1, 1933 bank loan negotiations, Mr. Lewis H. Seagrave, Chairman of the Board of U. S. Electric Power Corporation, verbally confirmed to R. L. Garner, Vice-President and Treasurer of the Guaranty Trust Company, that U. S. Electric Power Corporation would consult the banks (which are parties to the March 1, 1933 bank loan agreement) in connection with subsequent financing of the Standard Gas and Electric Company system.

In connection with specific financing for any part of the Standard Gas and Electric Company system, reference should be made to the December 21, 1929 Memorandum signed by H. M. Bylesby & Company, U. S. Electric Power Corporation, and Ladenburg, Thalmann & Co., but the more important provisions of that Memorandum are summarized in the general outline set forth on the following page hereof.

Mr. EMANUEL. I think that is true, Mr. Henderson.

Mr. HENDERSON. I seemed to remember it as such.

Mr. NEHEMKIS. I offer in evidence the document which Mr. Fuller was good enough to identify a moment ago.

Acting Chairman KING. It may be received.

(The memorandum referred to was marked "Exhibit No. 1969" and is included in the appendix on p. 12897.)

Mr. NEHEMKIS. And will you be good enough to identify the fol-

¹ "Exhibit No. 1931."

lowing document for me, Mr. Fuller, which purports to come from your files?

Mr. FULLER. I identify it.

Mr. NEHEMKIS. This is a letter from Mr. Simpson to Mr. Frank Common, who was associated with Hydro-Electric. Is that correct, sir?

Mr. FULLER. Yes.

Mr. NEHEMKIS. I want to read Mr. Simpson's understanding of this matter which was discussed at the time and which bears the same date as the previous discussions. Mr. Simpson wrote as follows [reading from "Exhibit No. 1970"]:

The legality of the contractual arrangements with Byllesby.

We have gone into this question carefully, both with Sullivan & Cromwell and Victor Emanuel, and Carl Fuller has prepared a memorandum as of today's date which sets forth the position. It confirms your view that the financial agreement is not legally binding. On the other hand Victor Emanuel feels strongly that the agreement has moral force, has in the past been adhered to, and is playing a role in the present negotiations. By this last I mean that he states that all parties concerned, including Byllesby, Harrison Williams and the banks, recognize the force of the Byllesby-Usepeco financial agreement.

And that confirmation incidentally is what Smith, Barney recognized.

He contends that everybody feels Usepeco's position in this respect is strong enough so that account must be taken of it, and that Byllesby have taken this attitude with all parties concerned.

Mr. Fuller, you will recall that it was on the basis of that interpretation of this agreement that Hydro put its money into this venture.

Acting Chairman KING. Is that right?

Mr. FULLER. Not entirely true. Of course there is a long period of cable correspondence, visits back and forth, and any number of other considerations involved. That was one consideration amongst many.

Mr. NEHEMKIS. And it was because of that important consideration that Schrodpriv cabled to Schrobanco's attention requesting it to obtain legal opinion?

Mr. FULLER. That is quite right.

Mr. NEHEMKIS. In order to find out whether it was legally enforceable.

Mr. FULLER. That is quite right. They were very careful.

Mr. NEHEMKIS. I offer this in evidence.

Acting Chairman KING. It may be received.

(The letter referred to was marked "Exhibit No. 1970" and is included in the appendix on p. 12897.)

Mr. NEHEMKIS. My associate, Mr. Chairman, advises me that inadvertently a document which had been identified by the witness was not offered. I ask that it be admitted at this time and I will advise the reporter of the exact place it should appear.

Acting Chairman KING. No objection.

(The document referred to was marked "Exhibit No. 1971" and is included in the appendix on p. 12899.)

Acting Chairman KING. Have you anything you gentlemen would like to say? The witnesses are excused and we will recess until 10:30 tomorrow morning.

(Whereupon at 5:20 p. m. the committee recessed until 10:30 o'clock Friday morning.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

FRIDAY, JANUARY 12, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment on Thursday, January 11, 1940, in the Caucus Room, Senate Office Building, Representative Clyde Williams presiding.

Present: Representative Williams (acting chairman), Messrs. Henderson, O'Connell, Lubin, and Brackett.

Present also: Clifton M. Miller, Department of Commerce; Thomas C. Blaisdell, Jr., National Resources Board; Peter R. Nehemkis, Jr., special counsel; David Ryshpan, financial analyst; Oscar Altman, associate financial economist; Howard V. McEldowney, accountant investigator, Securities and Exchange Commission.

Acting Chairman WILLIAMS. The committee will be in order.

Mr. HENDERSON. Mr. Chairman, in line with our previous practice of trying to give a bare outline of the day's presentation, I have this to say: Today, as the Investment Banking Section of S. E. C. relies again on the case method of presentation. Today we are concerned with certain investment-banking practices as exemplified by the financing of Shell Union Oil Corporation.

The committee will recall that there was placed in the record a table¹ indicating the experience of Morgan Stanley with about 70 issues, and if my memory serves me correctly, on all the issues which Morgan Stanley managed, they had the proud record of not a single loss. In this particular case, I believe Morgan Stanley was a participant in the underwriting for Shell Union, and I believe the record will show that some of the participants, some underwriters, distributors, did suffer some disadvantages, due, I think the publicity stated, to the overpricing of the issue—I believe that is the term.

We are concerned today with the presentation of the type of negotiation that went on between the issuer and those who handled the issue in the investment-banking field, and it will be necessary to go back into some of the previous issues which were brought out by American investment-banking firms. We are hoping that the testimony today will indicate not only the nature of the negotiations between the issuer and the investment-banking house, but the nature of the understandings and the practices and the type of contractual provisions that exist between the underwriter and those participating with him in the diffusion of the risk attendant upon bringing out an issue.

¹ See "Exhibit No. 1762," Hearings, Part 23, facing p. 12291.

The other day Mr. Nehemkis put into the record¹ some data indicating how the day loan operates. I think it was apparent to the committee that in many cases, practically every case, and as the later information concerning the financial resources of underwriting houses will show the issues are far larger, of course, than the total capital of the principal underwriter and in some cases exceed the total resources of all the underwriters concerned.

I think we ought to note again that the Investment Banking Section selected this particular case many months ago for presentation, that no one of the questions which will be addressed to witnesses was formulated by anybody connected with the S. E. C., and I particularly want the record to show that I did not suggest any part of the questions.

I say this, Mr. Chairman, because I have to note again that the S. E. C. has before it in a quasi-judicial capacity a pending issue in which Morgan, Stanley is interested. Therefore, again I will be inhibited from asking some questions about which I believe logically I would be prepared to interrogate the witness.

Acting Chairman WILLIAMS. You may proceed, Mr. Nehemkis.

Mr. NEHEMKIS. Will Mr. S. W. Duhig be good enough to take the witness stand, please?

Mr. HENDERSON. One other thing, Mr. Chairman. I think the record ought to note that some of the witnesses, particularly Mr. Stanley, have very graciously consented to come back from well-earned vacations to take part in this hearing at the convenience of the committee.

Acting Chairman WILLIAMS. Do you and each of you solemnly swear that the evidence you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VAN DER WOUDE. I do.

Mr. DUHIG. I do.

TESTIMONY OF R. VAN DER WOUDE, PRESIDENT, AND S. W. DUHIG, VICE PRESIDENT AND TREASURER, SHELL UNION OIL CORPORATION, NEW YORK CITY

Mr. NEHEMKIS. Mr. van der Woude, will you state your full name and address, please?

Mr. VAN DER WOUDE. R. van der Woude—v-a-n d-e-r W-o-u-d-e. I am president of the Shell Union Oil Corporation, 50 West Fiftieth Street, New York.

Mr. NEHEMKIS. What office do you hold with the Shell Union Oil Corporation?

Mr. VAN DER WOUDE. I am the president.

Mr. NEHEMKIS. You are the president of the company?

Mr. VAN DER WOUDE. Yes.

Mr. NEHEMKIS. Mr. Duhig, will you state your full name and address, please?

Mr. DUHIG. Stanley W. Duhig, 50 West Fiftieth Street, New York.

Mr. NEHEMKIS. And what position do you hold with the Shell Union Oil Corporation, Mr. Duhig?

¹ *Supra*, pp. 12538-12544.

Mr. DUHIG. I am vice president and treasurer of the corporation.

Mr. NEHEMKIS. And will you describe briefly the nature of your duties?

Mr. DUHIG. The usual duties that you would assign to a treasurer of an oil company in looking after the conservation of the company's cash and the financing of operations as needed, budgetary work, and so forth.

Mr. NEHEMKIS. Do you not, as part of your duties, specifically concern yourself with securities matters, that is to say, do you not make a study of market trends, questions of price as they appear on other offerings? Do you not concern yourself in general with financial and corporate problems so that you may better execute your official duties?

Mr. DUHIG. I would say that that is an important part of my duties.

Mr. NEHEMKIS. And will you describe briefly the kind of business that the Shell Union Oil Corporation is engaged in?

Mr. DUHIG. Shell Union Oil Corporation is a holding company having 100 percent subsidiaries engaged in the United States in producing, refining, and marketing petroleum products, with some interests in Canada.

SYMBOLS AND ABBREVIATIONS USED IN DOCUMENTS

Mr. NEHEMKIS. May I, for the sake of convenience, Mr. Duhig and Mr. Van der Woude, refer to Shell Union Oil Corporation hereafter in the hearings as "Shell"? Will that be agreeable?

Mr. DUHIG. Yes.

Mr. NEHEMKIS. We will have occasion, Mr. Duhig, to discuss a number of cablegrams between New York and London, and these cablegrams bear certain code addresses, such as Condeteck, Deterding, and so on. Will you briefly describe to the committee the meaning of the various code symbols?

Mr. DUHIG. Yes; code addresses for cablegram purposes are used both in sending and receiving communications to and from London. It happens that of our 12 directors, 4 of them at the present time are resident on the other side, although 3 of those 4 have been former officers and directors in this country of Shell, and it is common practice to arrive at unanimous decisions of the board by conferring with those members who are on the other side by cablegram. Naturally, for the sake of convenience and economy, we use cable addresses, code addresses, and I confirm those are the ones you refer to.

Mr. NEHEMKIS. When you and I have occasion to refer to Condeteck, as we shall, what will the committee understand?

Mr. DUHIG. That would be a cable from Shell Union New York office to the directors in, well, it would be from van der Woude to his fellow directors on the other side of the Atlantic.

Mr. NEHEMKIS. And when we have occasion to refer to Deterding, what shall the committee understand to be the meaning of that code symbol?

Mr. DUHIG. Similarly. It is just another code to cover the same purpose.

Mr. NEHEMKIS. And occasionally we shall refer to Vanwood. What will the meaning be that is accorded to that symbol?

Mr. DUHIG. That is another confidential code symbol from Mr. van der Woude to the London office.

Mr. NEHEMKIS. Mr. Chairman, may it please the committee, I intend to offer some 37 letters, memoranda, and cables between New York and London and others. If I were to ask that Mr. van der Woude or Mr. Duhig identify each cable before offering, we would probably be here much longer than I hope will be necessary. Accordingly I have asked Mr. Duhig to enter into a stipulation with me identifying each and every cable which will be offered to the committee this morning.

Mr. Duhig has been good enough to do so, and I show you, sir, the stipulation, with the documents which will be offered, and I respectfully request that the Committee permit me to offer these documents through the stipulation without the identification of each cable as the occasion arises.

Acting Chairman WILLIAMS. This stipulation, I assume, identifies the various cables by number, so they can be designated?

Mr. NEHEMKIS. Correct, sir. You will find attached to the stipulation the list of the cables and their numbers, and in that order they will be submitted to the reporter.

Acting Chairman WILLIAMS. That may be done.

(The stipulation referred to was marked "Exhibit No. 1972" and is included in the appendix on p. 12903.)

Acting Chairman WILLIAMS. Now that the record may be clear, do I understand this stipulation covers all the documentary evidence you propose to offer with reference to these witnesses?

Mr. NEHEMKIS. Correct, sir.

Mr. Duhig, on June 1935 and thereafter, did not Shell negotiate toward raising \$50,000,000 to \$60,000,000 in order to refund its outstanding 5-percent debentures?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. Were not negotiations carried on with a number of investment bankers at this time?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. Did not Shell discuss its financing needs with Lee Higginson Corporation and Hayden, Stone & Co.?

Mr. DUHIG. They did; yes.

Mr. NEHEMKIS. I offer a letter from Mr. J. C. van Eck to Mr. F. Godber, dated June 7, 1935.

Acting Chairman WILLIAMS. It may be received, and all of those will be received without formal declaration because they are covered by a stipulation.

Mr. NEHEMKIS. May I then just pass them directly to the reporter?

Acting Chairman WILLIAMS. Unless you want them back.

Mr. NEHEMKIS. No.

(The letter referred to was marked "Exhibit No 1973" and is included in the appendix on p. 12904.)

Mr. NEHEMKIS. Lee, Higginson & Co. was the predecessor of Lee Higginson Corporation, was it not?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And Lee, Higginson & Co. had headed all of the public offerings of Shell securities from the time of its first public financing in 1927?

Mr. DUHIG. The first public financing in 1922.

Mr. NEHEMKIS. 1922; yes.

Mr. DUHIG. I think that is correct.

Mr. NEHEMKIS. I offer a table compiled by the staff of the Securities Exchange Commission from information appearing in Moody's Manual, showing various public offerings of Shell Union securities prior to the year 1935.

(The table referred to was marked "Exhibit No. 1974" and is included in the appendix on p. 12905.)

DISCUSSIONS WITH BANKERS LEADING UP TO 1936 FINANCING

Mr. NEHEMKIS. Hayden, Stone & Co. had been one of the principal underwriters associated with Lee, Higginson in the underwriting of Shell securities, had it not, Mr. Duhig?

Mr. DUHIG. I think that is correct.

Mr. NEHEMKIS. Shell had also negotiated with Dillon, Read & Co. at this time. Is that not also correct, sir?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. I offer in evidence at this time a letter from Mr. S. Belither to Mr. Van Eck, dated July 22, 1935, and a cable from Condeteck to Deterding dated August 14, 1935.

(The documents referred to were marked "Exhibits Nos. 1975 and 1976" and are included in the appendix on p. 12905.)

Mr. NEHEMKIS. At this time, Mr. Duhig, did Shell not also discuss the proposed financing with Brown Harriman & Co.?

Mr. DUHIG. I think that they did; yes.

Mr. NEHEMKIS. And do you recall whether this financing was also discussed with Lazard Frères & Co.?

Mr. DUHIG. It was.

Mr. NEHEMKIS. I offer a cable from Deterding to Mr. Van Eck, dated October 14, 1935, and a cable from Deterding to Condeteck dated July 29, 1935, and in connection with that last cable, I should like to read into the record the following [reading from "Exhibit No. 1978"]:

We entirely agree every possible avenue must be investigated but anxious not to appear in any great hurry as we are satisfied with time our side.

(The cables referred to were marked "Exhibits Nos. 1977 and 1978" and are included in the appendix on p. 12906.)

Mr. NEHEMKIS. In undertaking these discussions, Mr. Duhig, was it not Shell's intention to consider proposals from various firms in order to determine the best terms obtainable in the market?

Mr. DUHIG. I would say that Shell did not go around soliciting different proposals; rather bankers offered proposals as to what might be done to meet Shell's situation, all of which we were very glad to consider and compare.

Mr. NEHEMKIS. And the purpose or interest, shall I say, of Shell in examining these various proposals was to obtain the best possible terms that the market made possible at the time?

Mr. DUHIG. That is correct.

Mr. MILLER. May I ask a question of the witness? You say that you were not soliciting proposals from the bankers. How did they know that you were in the market for financing? Did they come to you without any solicitation—maybe that isn't the word—without any approach from you?

Mr. DUHIG. Well, that is rather hard to make a general answer to, because naturally in following the financing business one becomes acquainted with bankers and discusses the subject of corporation finance on various occasions. I think that in most cases the investment bankers are sufficiently on their toes that they sense the possible needs of the corporation and inquire as to what might be worked out to improve the financial structure.

Mr. MILLER. These were all voluntary approaches, then, to you and your associates from the investment banking firms?

Mr. DUHIG. As I said, that is very difficult to answer. I myself dropped in in investment bankers' offices to discuss finance in general, or to discuss what some other oil company was currently doing as a matter of interest.

Mr. NEHEMKIS. On November 1, 1935, had not Dillon, Read made a tentative proposal to Shell?

Mr. DUHIG. Yes; they had.

Mr. NEHEMKIS. And on November 1, 1935, Condeteck sent the following cable to Deterding in London, from which I read a part [reading from "Exhibit No. 1979"]:

If indicated terms acceptable as basis for further negotiations would recommend we give other banker friends opportunity to indicate their terms stop Bankers whom we think should be given opportunity are

First Lee Higginson and Hayden Stone

Second Lehman Bros.

Third Lazard Freres.

I offer it in evidence.

(The cable referred to was marked "Exhibit No. 1979" and is included in the appendix on p. 12906.)

Mr. NEHEMKIS. After further discussion with the various bankers, Mr. Duhig, did not Shell, in December, advise Dillon, Read as to the terms on which Shell was prepared to sell the proposed issue?

Mr. DUHIG. I think the answer to that is that we probably indicated the terms at which Shell felt they could make a profitable deal and that anything less than that would not be worth doing.

Mr. VAN DER WOUDE. They quoted terms at which they thought they could make a deal with us.

Mr. NEHEMKIS. Let me read you from the letter from Dillon, Read & Co. to Shell, dated December 16, 1935 [reading from "Exhibit No. 1980"]:

You have informed us that you are preparing a registration statement and a prospectus for an issue of \$50,000,000 3½% Fifteen-Year Debentures of your Company to refund your outstanding Twenty-Year Sinking Fund Debentures—and so on.

"We understand that you are prepared to sell the issue at a price of 97% of the principal amount plus accrued interest. This price does not take into consideration the expenses to be borne by your Company in connection with the financing including the fees and disbursements of counsel and other experts and travelling, telephone, telegraph, and other similar out-of-pocket expenses (except selling expenses) of the underwriters. . . .

It is understood that this letter is not to be construed as a commitment, either legal or moral, on our part or on the part of your Company.

(The letter referred to was marked "Exhibit No. 1980" and is included in the appendix on p. 12907.)

Mr. NEHEMKIS. Now, on December 16, 1935, Dillon, Read wrote to Shell Union confirming these terms and stating that they were prepared to proceed with an investigation in the belief that they would be able to purchase the issue at the price mentioned. Is that not correct?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And Shell also advised Hayden, Stone and Lee Higginson as to the terms on which it was prepared to do business. Do you recall that, Mr. Duhig?

Mr. DUHIG. That is correct; yes.

Mr. NEHEMKIS. And on December 18, 1935, these two firms jointly wrote Shell stating that as soon as the market made it possible for them to meet these terms, they would communicate with Shell?

Mr. DUHIG. Correct.

Mr. NEHEMKIS. I offer in evidence a letter from Lee Higginson Corporation and from Hayden, Stone & Co. to the Shell Union Oil Corporation dated December 18, 1935.

(The letter referred to was marked "Exhibit No. 1981" and is included in the appendix on p. 12908.)

Mr. NEHEMKIS. However, Mr. Duhig, the price confirmed by Lee Higginson and Hayden, Stone was one-half point higher, was it not, than the price confirmed by Dillon, Read?

Mr. DUHIG. That is according to the record; yes.

Mr. NEHEMKIS. Was this due to their possible misunderstanding, or had you indicated different terms to Lee Higginson and Hayden, Stone?

Mr. DUHIG. We certainly hadn't indicated different terms; it possibly was a question of our not having indicated at all to Lee Higginson and Hayden, Stone or that they assumed something which they put in their letter and which was a surprise to us when we saw it.

Mr. NEHEMKIS. I read from a cable by Deterding, London, to Condetek, under date of January 14, 1936 [reading from "Exhibit No. 1982"]:

Weill telephoned us from Paris today and we recommend you keep in touch with Lazard Freres in New York and consider carefully any proposal more attractive than that of Dillon Read's.

For the sake of the record, "Weill" refers to the Paris partner of Lazard Freres & Co.

I offer the cable in evidence.

(The cable referred to was marked "Exhibit No. 1982" and is included in the appendix on p. 12908.)

During this period, after the proposals had been received from Hayden, Stone and Lee Higginson and Dillon, Read, Shell continued to consider proposals from other bankers, did it not, Mr. Duhig?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And on January 13, 1936, did not Mr. Clarence Dillon advise Shell verbally that his firm could now pay 97, this being the price at which Shell had indicated to Dillon, Read that it was prepared to sell the debentures?

Mr. DUHIG (to Mr. van der Woude). Can you answer that?

Mr. VAN DER WOUDE. That is correct.

Mr. NEHEMKIS. I offer in evidence a cable to Condeteck, London, under date of January 3, 1936, and I read the second paragraph of this cable, marked "Confidential" [reading from "Exhibit No. 1983"]:

In order to make progress my opinion we should now obtain from all parties interested offer in writing say by next Thursday for alternative \$50,000,000 with obligation refund one of present Shell Union Oil Corp. issue or \$60,000,000 with obligation to refund both Shell Union Oil Corp. and Shell Pipe Line Corp. issues stop

What is your opinion

PURPOSE OF PREVIOUS NEGOTIATIONS TO PAVE WAY FOR FORMAL BIDS

Mr. NEHEMKIS. Mr. Duhig, was not the purpose of the previous negotiations to pave the way for a later request to the bankers to submit formal bids?

Mr. DUHIG. That is correct.

(The cable referred to was marked "Exhibit 1983" and is included in the appendix on p. 12908.)

Mr. NEHEMKIS. But the idea of obtaining competitive bids from all the interested parties was discarded, was it not?

Mr. DUHIG. Yes; it was.

Mr. NEHEMKIS. And in a cable to Deterding, London, by Conde-teck, under date of January 22, 1936, there appears the following [reading from "Exhibit No. 1984"]:

As contemplated procedure of competitive bidding caused undesirable complications we have had discussions with view bring bankers possibly together without injury to our interests and understanding between two groups now arrived at on basis Dillon Read Hayden Stone will be joint syndicate managers both houses to head prospectus but Dillon Read to keep syndicate books.

I offer in evidence the cable previously identified.

(The cable referred to was marked "Exhibit No. 1984" and is included in the appendix on p. 12909.)

Mr. NEHEMKIS. Will you tell me, if you will, Mr. Duhig, what undesirable complications would have resulted from the contemplated procedure of competitive bidding?

Mr. DUHIG. Well, we were faced with a multiplicity of plans, to begin with, trying to compare apples and oranges, you might say, and decide which was preferable, and we felt that our relations with all of the bankers being very cordial, there was nothing to be gained by trying to set one off against the other, because as the exhibit you have entered states, it was felt that there would be no disadvantage to the corporation in the terms by bringing them together and getting them jointly to enter into negotiations for this financing.

Mr. HENDERSON. Mr. Duhig, you weren't comparing apples to oranges but comparing oranges of different kinds or apples of different kinds. It all related to the specific issue.

Mr. DUHIG. They all related to that, some of which suggested the possibility of convertible debentures or attaching warrants; some had different ideas from others as to what was the right call price or sinking fund terms, and as I remember it, and as you might naturally expect, each proposal slightly differed from the other because they had not been made up in the same office.

Mr. HENDERSON. You had had no difficulty in wading through the relative advantages to the company. Did you have these different proposals? You are an experienced financial officer.

Mr. DUHIG. I think not as experienced, however, as the bankers are in such matters.

Mr. HENDERSON. I think the record here shows that you rather outsmarted the bankers, does it not? I don't want to get ahead of the story. I like modesty in its proper place, but it would seem to me you are a little too modest.

Mr. DUHIG. I think that is something not borne out by the record, Mr. Henderson.

Mr. HENDERSON. I think we will have to let the committee judge from the record.

SHELL PROCEDURE IN ISSUING SECURITIES

Mr. NEHEMKIS. Mr. Duhig, was not Shell's final procedure designed to obtain the best competitive price while at the same time utilizing the accepted forms of banker-corporation relationships?

Mr. DUHIG. That is correct, if you mean by best competitive price not necessarily the highest price for the interests of the corporation.

Mr. NEHEMKIS. In other words, Mr. Duhig, Shell was trying to eat its cake and have it, too. Is that not so?

Mr. DUHIG. I don't understand what you are referring to.

Mr. VAN DER WOUDE. You don't blame us for that, do you?

Mr. NEHEMKIS. No.

Mr. Duhig, how did you manage to bring the two groups together without injury to your interests?

Mr. DUHIG. I think the answer to that is that we had our own idea as to what would be a profitable deal, and the line which we couldn't cross for fear of the deal not being worth doing at all.

Mr. VAN DER WOUDE. May I say more as a matter of policy, you have to go back a little bit. The record shows we used to have our financial transactions with Lee Higginson. You know that Lee Higginson had certain misfortunes, and as a result they were no longer in the same situation as they had been before. Hayden, Stone also were in close relation with them, and also Mr. Charlie Hayden, a senior partner of Hayden, Stone, was upon the board of our company. So for a while Lee Higginson was in a different position from what they were before, and Dillon, Read, at that time, in '35, made proposals for financing, and we, of course, considered it, which came, as Mr. Duhig pointed out, to other bankers, and different propositions from other bankers, and then it finally came to deciding how we would deal with the situation, and we felt that Dillon, Read having come first, and there was an opportunity of doing solid financing, we naturally felt that Dillon, Read should be given preference and should be given a chance of getting it.

Two or three had been soliciting our business in line with their own ideas. There wasn't much difference in the different offers. I think you are right in saying it was comparing oranges with oranges or apples with apples. It was just a question on what basis we preferred to do our financing. Finally we thought the basis of Dillon, Read was a more acceptable one, and it was logical to do business with our old friends

FORMATION OF THE 1936 SYNDICATE

Mr. NEHEMKIS. Dillon, Read and Lee Higginson were selected to be joint managers, were they not?

Mr. VAN DER WOUDE. That is correct.

Mr. NEHEMKIS. I think you have already indicated, but I would like the record to show at this point again, were not all of the investment bankers with whom Shell had negotiated included in the syndicate?

Mr. VAN DER WOUDE. I think they were; yes.

Mr. NEHEMKIS. I offer a list of the participations, the dollar amount of the participations of the Shell Union group dated February 10, 1936. (The list referred to was marked "Exhibit No. 1985" and is included in appendix on p. 12910.)

Mr. NEHEMKIS. Also, Mr. Duhig, all of the investment bankers that had been principal underwriters in previous Shell issues were also included, were they not?

Mr. DUHIG. I think that is correct.

Mr. NEHEMKIS. In addition, other investment bankers were also included, but these bankers were selected by Dillon, Reed, and Hayden, Stone, subject, of course, to the approval of Shell?

Mr. DUHIG. That is right.

Mr. NEHEMKIS. Among such bankers chosen were Morgan, Stanley & Co. for a participation of \$5,000,000 of debentures, is that correct?

Mr. DUHIG. That is correct; yes.

Mr. NEHEMKIS. On March 6, 1936, did not Dillon, Read endeavor to induce Shell to reduce the price from 97 to 96½, despite the fact that a firm commitment had been made?

Mr. DUHIG. I think Mr. van der Woude can answer that.

Mr. VAN DER WOUDE. That is correct. Of course, they hadn't made a firm commitment. All they did was to indicate what conditions were at the time of the issue, then the price would be so and so. If I remember the letter of Dillon, Read, they did not make a firm commitment.

Mr. NEHEMKIS. What did you understand it to be?

Mr. VAN DER WOUDE. We understood that is what it would be unless there was a change in the market.

Mr. NEHEMKIS. In other words, you understood what my question implied, that it was a firm commitment, despite the provisions that surrounded the transmittal letter, which I read into the record, that this didn't have any moral or legal effect, is that not correct?

Mr. VAN DER WOUDE. I think in our minds, yes; because we subsequently told Mr. Dillon that we considered it definitely indicated a firm price, and he had to adhere to it.

Mr. NEHEMKIS. And may I now repeat my question so the record will be clear. Is it not a fact on or around March 6, 1936, Dillon, Read endeavored to induce Shell to reduce the price from 97 to 96½, despite the fact that a firm commitment had been made? May I have your answer to that?

Mr. VAN DER WOUDE. It is correct he endeavored to reduce it.

Mr. NEHEMKIS. I offer in evidence a telegram to Godber from R. van der Woude.

(The telegram referred to was marked "Exhibit No. 1986" and is included in the appendix on p. 12910.)

Mr. MILLER. May I ask a question, Mr. Nehemkis? Mr. van der Woude, why did Dillon, Read & Co. wish or suggest a reduction in the price from 97 to 96½?

Mr. VAN DER WOUDE. Because they thought the market couldn't stand the price which they had indicated.

Mr. MILLER. Had the market changed in their opinion?

Mr. VAN DER WOUDE. Apparently, in their opinion; in our opinion, it had not.

Mr. NEHEMKIS. And Shell, of course, saw no reason to accede to this request?

Mr. VAN DER WOUDE. No.

Mr. NEHEMKIS. I offer in evidence a telegram from Godber to van der Woude dated March 6, 1936.

(The telegram referred to was marked "Exhibit No. 1987" and is included in the appendix on p. 12911.)

Mr. NEHEMKIS. On March 7, 1936, Mr. Duhig, was not a purchase contract entered into by Shell with 29 underwriters?

Mr. DUHIG. I think that is the correct date.

Mr. NEHEMKIS. And did not Shell agree to sell to the 29 underwriters \$60,000,000 15-year 3½ percent debentures due March 1, 1951?

Mr. DUHIG. At 97—that is correct.

Mr. NEHEMKIS. And the underwriters agreed to purchase severally specified amounts of debentures as you have indicated at 97, plus accrued interest?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. The public offering price, therefore, was to be 99 and accrued interest.

Mr. DUHIG. Correct.

Mr. NEHEMKIS. And was not a selling group formed to purchase severally a portion of the debentures from the underwriters at a concession of 1¼, less expenses not to exceed one-eighth percent?

Mr. DUHIG. That is my recollection.

Mr. O'CONNELL. May I ask a question? Mr. Nehemkis said, "And therefore the offering price by the underwriters would be 99." Is that by virtue of your agreement with the underwriters, the spread of two points?

Mr. DUHIG. It was agreed that the spread would be two points; yes, sir.

Mr. NEHEMKIS. Mr. Chairman, I wish to comment at this moment that the document I now propose to offer is not covered by the stipulation. It is a copy of the purchase contract which Dillon, Read have been good enough to submit to us, and I ask no one to identify it, because there is a letter of transmittal accompanying the document.

May it be received in evidence?

Acting Chairman WILLIAMS. It may be received.

Mr. NEHEMKIS. I beg your pardon, my associate tells me I inadvertently referred to it as the purchase contract. It is the underwriting agreement.

(The document referred to was marked "Exhibit No. 1988" and is included in the appendix on p. 12911.)

Mr. NEHEMKIS. The public offering was made on March 11, 1936, at 99; is that correct, sir?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And is it not also correct that the debentures moved slowly?

Mr. DUHIG. They did.

Mr. NEHEMKIS. I offer in evidence a telegram to Mr. Duhig from J. W. Watson under date of March 11, 1936.

(The telegram referred to was marked "Exhibit No. 1989" and is included in the appendix on p. 12914.)

Mr. NEHEMKIS. I offer a telegram from Mr. van Eck to Mr. Godber under date of March 11, 1936, and I read from this message to Mr. Godber at Mexico City [reading "Exhibit No. 1990"]:

Understand sale of issue going very slowly and first day only about 50% of issue sold (stop) Am afraid will take some time before whole issue absorbed.

I offer this in evidence.

(The telegram referred to was marked "Exhibit No. 1990" and appears on this page.)

WAIVER OF MANAGEMENT FEE

Mr. NEHEMKIS. For the convenience of the committee, Mr. Chairman, we have prepared a memorandum which gives in great detail the technical steps that took place in this early issue. If we were to go into them at this time, it would take too great a time. Accordingly, we have prepared as I have indicated, our memorandum of the understanding of the facts.

We have submitted this memorandum to Messrs. Dillon, Read & Co. for their understanding as to whether our statement of the facts and interpretation is correct, and I have here a letter from Mr. Harry H. Egly, an officer of that firm, addressed to me, in which he indicates that his firm accepts the data. So that there may be no misunderstanding, I ask leave of the committee to read this letter. As I say, it is addressed to me. [Reading from "Exhibit No. 1991-1":]

As you have requested, we have looked over the memorandum prepared by your office, which was enclosed with your letter of November 27, 1939, and which is headed "Re: Distribution of Shell Union 3½% Debentures in 1936." In general the data appear to be correct.

For your information, the amount of Debentures offered to the Selling Group was \$27,480,000. This figure was left blank in your memorandum.

We had requested them to fill that information in because we didn't know what it was.

You have asked why no management fee was charged although it was originally contemplated that each of the Managers was to receive ⅓ of 1%. In view of the general market uncertainty which existed just prior to the offering date and of the unwillingness of the Company to meet our recommendation in pricing the issue, it was decided to waive the fee in this instance thus permitting the full discount to be divided among all underwriters and selling group members.

I offer, sir, the letter of transmittal and the memorandum to which reference has been made.

Acting Chairman WILLIAMS. It may be received.

(The documents referred to were marked "Exhibit No. 1991-1 and 2" and are included in the appendix on p. 12915.)

Mr. NEHEMKIS. On April 3, 1936, Mr. Duhig, were not most of the underwriters still left with large amounts of unsold debentures?

Mr. HENDERSON. Mr. Nehemkis, has that memorandum been submitted to the Shell Union people also?

Mr. NEHEMKIS. No, sir; we did not feel it was necessary to do that, because the Shell Union people really had no knowledge of these transactions. They are the specialized transactions that only a manager of a syndicate would know about, since the information must come of necessity from the manager's own syndicate books. Obviously, we felt that the Shell people would not know about those facts.

Mr. HENDERSON. I suggest if Mr. Duhig wants a copy, we will be glad to mail it to him.

Mr. DUHIG. Thank you very much.

Mr. NEHEMKIS. I offer in evidence a letter from Mr. van Eck to Mr. G. Legh-Jones at London, dated April 3, 1936.

(The letter referred to was marked "Exhibit No. 1992" and is included in the appendix on p. 12918.)

DISCUSSIONS WITH BANKERS IN 1937 FOR REDEMPTIONS OF OUTSTANDING
PREFERRED STOCK

Mr. NEHEMKIS. And now, Mr. Duhig, I would like you to turn with me, if you will, to the events leading up to the negotiations of 1937. In January of the following year, that is to say, 1937, did not Shell commence negotiations for the refunding of \$34,350,000 5½-percent preferred stock then outstanding?

Mr. DUHIG. I wouldn't call them negotiations, Mr. Nehemkis, because as a matter of fact no such operation has ever been carried through as the refunding of that preferred stock, but we did have discussions with various parties regarding the refinancing of that preferred stock.

Mr. NEHEMKIS. I offer in evidence a cable to Vanwood, London, under date of January 20, 1937.

(The cable referred to was marked "Exhibit No. 1993" and is included in the appendix on p. 12919.)

Mr. NEHEMKIS. And were not discussions held with Dillon, Read & Co. and Hayden, Stone about this matter?

Mr. DUHIG. In January 1937?

Mr. NEHEMKIS. On or about the beginning of January or the early part of January 1937.

Mr. DUHIG. Yes; I believe that the proposal was talked over with Dillon, Read; Hayden, Stone; and others; Lazard; and Lee Higginson.

Mr. NEHEMKIS. And Lee Higginson.

Mr. DUHIG. Correct.

Mr. NEHEMKIS. And had not Lee Higginson and Lazard Frères actually made some tentative proposals?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. So that by the time the proposals were received from Lee Higginson and Lazard, the scene had shifted somewhat, shall we say, from discussions to, perhaps, negotiations, although not consummated?

Mr. DUHIG. I think you could call them negotiations; yes.

Mr. NEHEMKIS. I offer in evidence a letter from Mr. van der Woude to Mr. van Eck, dated February 4, 1937.

(The letter referred to was marked "Exhibit No. 1994" and is included in the appendix on p. 12919.)

Mr. HENDERSON. Mr. Chairman, I would like to advert back to a letter of April 3, 1936, which has been offered in evidence, which was evidently sent by Mr. van Eck to Mr. Legh-Jones. Mr. van Eck says [reading from "Exhibit No. 1992"]:

Most of the other underwriters and dealers have either been able to dispose of their bonds or only have a very nominal amount on hand.

Then he says a survey shows what certain houses still had on hand. I would like to indicate that in my opinion, that is not a nominal amount. Just roughly, in some cases the amount on hand represented as much as one-third of the total underwriting resources of some of the underwriting houses, and does indicate how underwriting capital can get frozen if there is an issue which is overpriced or hits a sticky market.

Mr. MILLER. I would like to ask a question. According to this letter of April 3, the price on that date which the bonds were quoted was 95½, and as I understood, the issue price was 99?

Mr. VAN DER WOUDE. That is right, yes.

Mr. MILLER. The public who had purchased these bonds at 99—apparently most of the issue had been distributed to the public at this date—suffered a loss in the quoted value of their securities.

Mr. van der Woude. Not if they kept them.

Mr. MILLER. At this stage?

Mr. VAN DER WOUDE. If they had sold them at that stage, yes.

Mr. MILLER. Did you think they were happy about that, these purchasers, public investors? I mean from the issuer's standpoint, Mr. van der Woude, is there reason for the issuer to be concerned for the welfare of the public who had purchased your securities?

Mr. VAN DER WOUDE. I should think so. We have often been told that it is not to our interest to make an issue that goes down directly after the issue, but in most cases I think prices have come back again.

Mr. MILLER. In other words, it is harmful to the issuer.

Mr. VAN DER WOUDE. We have never felt ourselves it was harmful to us if we made an issue that went down in price. We have never felt it as such, certainly. We have never felt it in subsequent financing transactions. In whatever subsequent deals we made, the investment houses and the public were always anxious to take them up.

Mr. MILLER. In other words, you feel it hasn't hurt your future borrowing credit with the underwriters or the public.

Mr. VAN DER WOUDE. All I can say is that experience has shown it did not.

Mr. MILLER. Then you feel from a public standpoint that the issuer really isn't concerned with what happens to the public's bonds?

Mr. VAN DER WOUDE. Certainly he is, but I don't think you can take a short interval. For instance, in the investment of our pension funds we buy bonds all the time, we don't look every day to see whether those bonds have gone up in price or gone down. We see that it is a good bond and we don't look every day to see what it closed at on the stock exchange. There are so many considerations—there may be a war in Europe or something that may be quite unforeseen. But it doesn't mean that subsequently the bond isn't good. I generally buy bonds and lay them aside and when they fall due, you get the

full price, if you have bought bonds in a company that is a good company.

Mr. MILLER. Suppose it was the general experience that every time there was a new issue, there was an immediate price decline and that became general, do you think the public would be anxious to purchase new issues?

Mr. VAN DER WOUDE. I can't tell you. The only thing I can give you is our experience, the fact that the investment bankers have told us that we are apt to drive too hard a bargain, but we have always found when the next issue came, they were always anxious to make the issue and the public was anxious to buy it.

Mr. NEHEMKIS. Mr. Chairman, may I offer in evidence a cable to Vanwood under date of March 5, 1937.

(The cable referred to was marked "Exhibit No. 1995" and is included in the appendix on p. 12922.)

Mr. NEHEMKIS. I read from that cable to Vanwood [reading from "Exhibit No. 1995"]:

Furthermore in my opinion best not to disturb grouping of bankers as was formed under last year's bond issue in fact I understand Dillon Read Hayden Stone and Lee Higginson have already come to such understanding amongst each other (fullstop) My reasons are:

Firstly. We should avoid running into same complications as last year

Secondly. Neither Hayden Stone nor Lee Higginson would in my opinion be suitable leaders

Thirdly. We could not very well switch over to entirely new leaders without first giving last year's group their opportunity (fullstop)

My idea is therefore to give last year's leaders in Dillon group an opportunity of jointly making us an offer along the lines as per your cable (fullstop) If their offer is unsatisfactory to us I would favour inviting Lehman Bros. to make us an offer (fullstop) They are anxious to take leading position and I personally feel as you know that a closer connection with them would be advantageous (fullstop) Presumably they would handle matter in conjunction with Kuhn Loeb (fullstop)

On March 16, was not a banking group composed of Dillon, Read & Co., Lee Higginson & Corp., Hayden Stone & Co., and Lehman Brothers prepared to underwrite a preferred stock issue for Shell, Mr. Duhig?

Mr. DUHIG. Yes, that is correct.

Mr. NEHEMKIS. And in a memorandum prepared by you, Mr. Duhig, under date of March 16, 1937, you wrote as follows [reading from "Exhibit No. 1996"]:

On March 16th bankers called at the Shell Union office for the purpose of stating the proposition which they and their group were prepared to make in connection with refinancing the present Shell Union preferred stock and raising additional money, if necessary. Dillon, Read & Co. were represented by Mr. Dean Mathey and Lee Higginson & Co. by Mr. E. N. Jesup.

In opening their discussion they stated that they had agreed among themselves that the group would be approximately the same as the 1936 group and that the group management would be shared in the following proportions:—

And there you list the proportions.

I offer in evidence the memorandum from which I have been reading.

(The memorandum referred to was marked "Exhibit No. 1996" and is included in the appendix on p. 12923.)

Mr. NEHEMKIS. Did not Shell advise this group that the offer was unsatisfactory, Mr. Duhig?

Mr. DUHIG. Shell advised the group that the offer was disappointing and unsatisfactory.

Mr. NEHEMKIS. I offer in evidence a cable to Vanwood from Mr. van der Woude.

(The cable referred to was marked "Exhibit No. 1997" and is included in the appendix on p. 12924.)

Mr. NEHEMKIS. On March 17, 1937, the following cable was sent to Vanwood in London by Mr. van der Woude [reading from "Exhibit No. 1998"]:

Referring my cable 24 consider we should give Dillon group every opportunity of revising their offer and propose to set limit of time say 10 days.

At the end of this period in case the revised offer if any is not acceptable we to notify them that we consider ourselves entirely free to approach others.

I understand that provided it is made clear negotiations with Dillon have come to an end members of group then free to deal with us.

Mr. van der Woude, that was your understanding of the customs of the Street, was it not?

Mr. VAN DER WOUDE. Yes.

Mr. NEHEMKIS. I now continue reading from the cable [reading further from "Exhibit No. 1998"]:

In aforementioned event suggest we consider Kuhn, Loeb/Lehman combination or Morgan Stanley as leaders.

I offer in evidence the cable from which I have been reading.

(The cable referred to was marked "Exhibit No. 1998" and is included in the appendix on p. 12924.)

Mr. NEHEMKIS. Due to unfavorable market conditions, Mr. Duhig, negotiations regarding public financing were discontinued until some time in January of 1938; is that not substantially correct, sir?

Mr. DUHIG. You said for public financing?

Mr. NEHEMKIS. Correct.

Mr. DUHIG. That is correct; yes.

NEGOTIATIONS WITH MORGAN, STANLEY & CO. INC.

Mr. NEHEMKIS. At this time, that is to say in 1938, was it not determined to begin negotiations with Morgan Stanley & Co.?

Mr. DUHIG. It was.

Mr. NEHEMKIS. I offer in evidence a letter from Mr. van Eck to Mr. van der Woude under date of January 18, 1938.

(The letter referred to was marked "Exhibit No. 1999" and is included in the appendix on p. 12925.)

Mr. NEHEMKIS. Mr. van der Woude, was not the reason that your company at this time decided to open up negotiations with Morgan Stanley due to your dissatisfaction with Dillon Read's leadership of the previous financing?

Mr. VAN DER WOUDE. No; I can't say that. It was a combination of circumstances. Previous to 1936, Mr. van Eck who is here referred to so often was in New York and was chairman of our company, and he dealt chiefly with our finances, so that naturally I was informed of what he was doing. After he left, about in 1936, I more or less took direct charge of our financing.

As to our connections and what possibly happened in the past, it is very difficult to say exactly what the reason was. You have to bear in mind that Dillon, Read was not a long standing connection

of the Shell Union here in this country, that our older, standard connection was Lee Higginson and Hayden, Stone, and the only transactions we had ever made with Dillon, Read was the issue of 1935 or '36 of \$60,000,000. I had been acquainting myself with both conditions and people, and generally forming my own views, and for various reasons I came to the conclusion that I would like to see our company get a connection with Morgan Stanley.

Mr. NEHEMKIS. Thank you very much, sir, for your explanation.

Mr. Chairman, may it please the committee: In connection with the next document that I propose to offer in evidence, I have asked Mr. Charles B. Stuart of Halsey, Stuart & Co., Inc., New York, to enter into a stipulation with me concerning the identification of the document, purely so that Mr. Stuart would not have to come down here to identify this document, and as I offer it to you, sir, I ask you, if you will, sir, to examine the stipulation.

I read to you from an office memorandum dated May 11, 1938, from the New York office of Halsey, Stuart to Mr. H. L. Stuart at the Chicago office. [Reading from "Exhibit No. 2000-2"]:

I understand Morgan Stanley are working on a good size bond deal for Shell Union Oil. I further understand that Dillon Read, who handled the last issue, made such a botch job of it, the Company will have nothing further to do with them.

I offer this in evidence.

(The documents referred to were marked "Exhibits Nos. 2000-1 and 2000-2" and are included in the appendix on pp. 12925 and 12926.)

Mr. VAN DER WOUDE. I would like to add one thing to what I said, that I think you will find amongst the records which you have got there that on more than one occasion I pointed out to Dillon Read that we did not look upon them as our permanent banking connection. On two or three occasions I made it quite clear that we considered ourselves entirely free. That in itself shows that our mind was open, and that was not to be interpreted as anything definite that had happened between the two of us.

Mr. HENDERSON. Mr. van der Woude, do you in any of your world-wide enterprises regard any group as your bankers?

Mr. VAN DER WOUDE. In other countries, you mean? Before I answer, you have to bear in mind that our company here is an entirely separate company from our various companies in the rest of the world. But as far as conditions in other countries are concerned, I think the situation is—I am not sure because I haven't been there for a long time, but I think we have got certain banking houses that in the ordinary course of events would do our financing. It might quite well happen that there might be a financing transaction with another firm.

Mr. HENDERSON. There would be a continuing relationship, as the expression is here?

Mr. VAN DER WOUDE. Yes. In this business as in the case of lawyers, doctors, and so on, you get to know each other. It is very important in a financial house that you know in what way you do your business. You ought to build up certain confidence, and certainly you ought to know what way the business is being conducted.

Mr. HENDERSON. You used to regard Lee Higginson as your bankers here?

Mr. VAN DER WOUDE. Yes, they were the people we would look to first.

Mr. HENDERSON. Do you regard Morgan Stanley as your bankers now?

Mr. VAN DER WOUDE. Yes.

Mr. NEHEMKIS. As your permanent bankers?

Mr. VAN DER WOUDE. Who can say what is permanent? It depends a good deal on how Morgan Stanley can do the work for us.

Mr. NEHEMKIS. And depending upon market conditions and subsequent opportunities at a later time.

Mr. VAN DER WOUDE. Yes; and a great number of other things.

Mr. MILLER. Mr. Nehemkis, I wanted to ask a question which I think is related to Mr. Henderson's. What is the relation of the Royal Dutch Co. to Shell Union Co.? Do they own stock in Shell Union?

Mr. VAN DER WOUDE. Yes; the relationship is that they own approximately 64 percent, and we have three or four of their representatives on the board of the Shell Union, and that is the reason why you see a certain number, not very many but a certain number of cable exchanges take place on matters of financing or policy, seeing that three or four members of the Royal Dutch Co. are on the board of the Shell Union in America.

Mr. MILLER. Did Dillon, Read ever do any financing for Royal Dutch in this country?

Mr. VAN DER WOUDE. Not in this country, but on the other side they did.

Mr. MILLER. It seems to me I recollect there was an issue in this country

Mr. VAN DER WOUDE. I don't think so.

Mr. DEAN MATHEY (Dillon, Read & Co.). We did two issues in this country, one for the Batavia and one for the Royal Dutch direct in dollars in this country.

Mr. VAN DER WOUDE. I got confused. Actually it was closed on the other side, wasn't it? I perhaps ought not to do this because I have information only with regard to Shell. My recollection with regard to the dealings of Royal Dutch Shell with Dillon, Read was that about 10 years ago, or 12 years ago, they made an issue for them which was entirely negotiated in The Hague or London, but it was a dollar loan. Mr. Mathey ought to be able to answer the question better than I, because I was certainly not in on the financing operations for the Royal Dutch in London or The Hague.

Mr. NEHEMKIS. Mr. van der Woude, do you recall that in April of 1938, more specifically April 13, 1938, you had occasion to write to Mr. van Eck at London, in which you said the following [reading from "Exhibit No. 2001"]:

On the question of finance we have had some preliminary discussions with Morgan, Stanley with a view to enabling them to familiarize themselves somewhat with our activities, and judging from the discussions I have had with them I do not anticipate any difficulties such as you referred to in your letter of the 18th January. Morgan Stanley seem to be very pleased to get an opportunity of establishing a connection with us.

Do you recall that?

Mr. VAN DER WOUDE. I recall that.

Mr. NEHEMKIS. The letter is offered in evidence.

(The letter referred to was marked "Exhibit No. 2001" and is included in the appendix on p. 12926.)

Mr. NEHEMKIS. In other words, at the time we have now reached, the door was open for full discussion with Morgan Stanley?

NEGOTIATIONS WITH EQUITABLE LIFE ASSURANCE SOCIETY

Mr. NEHEMKIS. Mr. Duhig, while carrying on negotiations with Morgan Stanley did not Shell at the same time also carry on negotiations with the Equitable Life Assurance Society?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And these negotiations led, did they not, to a private placement of \$25,000,000 of 3½ debentures in June 1938?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And was not the only difference between the proposition that Morgan Stanley finally advanced to you, and the proposition that you finally agreed upon with Equitable, the 2-percent underwriting fee that Morgan Stanley would have had to have been paid?

Mr. DUHIG. I don't know that mathematically that is strictly correct; I certainly have it distinctly in mind that the arrangement we made with Equitable direct, and without any commission, was a better one than we would have negotiated at that particular time through underwriters.

Mr. NEHEMKIS. Do you recall, Mr. Duhig, on April 22, 1938, you made a memorandum regarding a number of your discussions with Mr. Lafferty, of the Equitable Life Assurance Society, as well as details of your discussions with Morgan Stanley?

Mr. DUHIG. Yes; that is right.

Mr. NEHEMKIS. I now read to you from that memorandum, and I quote [reading from "Exhibit No. 2002"]:

Incidentally, this is approximately the same proposition as suggested tentatively by Morgan, Stanley & Co., except that they would charge 2 percent for underwriting.

I offer in evidence the memorandum from which I have just read.

Mr. VAN DER WOUDE. May I see this?

Mr. NEHEMKIS. This is a memorandum written by Mr. Duhig on April 22, 1938, identified by Mr. Duhig, and covered in the stipulation which has been offered to the committee. Do read it.

Mr. O'CONNELL. May I ask a question? Do I understand, then, that the price that your company received from the Equitable was substantially the price at which Morgan Stanley would have offered?

Mr. DUHIG. That is my recollection. They would have done a similar deal.

Mr. O'CONNELL. The net result was your company got two points more for the bonds?

Mr. DUHIG. That is approximately correct. I don't think you can ever say two deals are identical.

Mr. O'CONNELL. I understand. I mean substantially.

Mr. VAN DER WOUDE. I think there is a misunderstanding here. It is awfully hard to go back, with so many things happening, to exactly what happened, but I did discuss the matter personally with Morgan Stanley before we closed the deal with the insurance company. You

have to bear in mind here this is just a memorandum, perhaps not too carefully written, for office use. But it says here [reading from "Exhibit No. 2002"]:

Arrange a loan to Shell Union of say 20 to 25 million dollars for ten years, at 3½%, for which they would pay us 99.

We were dealing with Morgan Stanley on the basis of 15 years, and my recollection is that Morgan Stanley, when I discussed this with them, before we decided to go to the insurance company, they quoted different rates, and that the difference between the two offers was not just the commission that Morgan Stanley would get; it was smaller than that.

We were comparing really different things here in this memorandum.

Mr. NEHEMKIS. Oranges and apples this time?

Mr. VAN DER WOUDE. No; all oranges, perhaps large and small ones, and of a different color. There is a confusion between 10 and 15 years, and also a confusion of interest, because we closed with the insurance at 3½%.

Mr. NEHEMKIS. And the writer of the memorandum was confused?

Mr. VAN DER WOUDE. I wouldn't say that, but it certainly doesn't give the facts exactly as they were.

Mr. DUHIG. As I tried to say a moment ago, there are no two deals alike.

Mr. VAN DER WOUDE. I had a discussion with Morgan Stanley before we closed the deal with the insurance company, and unless I am very much mistaken the difference was much smaller than the commission was.

Mr. NEHEMKIS. You wish the record to show at this time that the difference between the deal with Equitable and the deal with Morgan would not have been the two percent underwriting commission?

Mr. VAN DER WOUDE. That is my recollection. I can't vouch for that, but that is distinctly in my mind.

"SHOPPING AROUND"

Mr. NEHEMKIS. I now offer in evidence the memorandum previously referred to, and I also offer in evidence a cable to Vanwood, London, by Mr. van der Woude under date of April 30, 1938.

(The documents referred to were marked "Exhibits Nos. 2002 and 2003" and are included in the appendix on p. 12927.)

Mr. NEHEMKIS. Mr. Duhig, was not the effect of negotiating simultaneously with Morgan, Stanley and Equitable to "shop around" and obtain the best price possible for Shell?

Mr. DUHIG. I think you can put several interpretations on that term "shop around." We wouldn't like to give the interpretation that we went first to one and then the other and said, "Now, look what we can do. Can't you do better, and so on?" I think we sought those two sources of financial advice to see which one was most profitable to the Shell stockholders.

Mr. O'CONNELL. Do you think it was proper to "shop around," as you define it here?

Mr. DUHIG. I wouldn't feel comfortable about it or feel it tended to promote friendly relations with the people that we were looking

to for advice to offset one against the other and run back and forth between the two offices offsetting offers in order to try to beat down the price or anything of that kind.

Mr. O'CONNELL. It would have probably resulted in a better price for Shell.

Mr. DUHIG. A lower price but maybe not a better price.

Mr. O'CONNELL. To me that use of the words is practically synonymous.

Mr. VAN DER WOUDE. The use of the words "shopping around" is perhaps exaggerated. What we have in mind is not exactly shopping around.

Mr. HENDERSON. Maybe it is something like this. You remember when Chanticleer rolled an ostrich egg into the henyard and said, "I don't want to offer any complaint, but this is what they are doing in other places." [Laughter.]

Mr. VAN DER WOUDE. No, to add to what Mr. Duhig was saying, it is not a question of going around from Morgan Stanley to the insurance company and vice versa. Morgan Stanley knew what we were doing. I told Morgan Stanley we had to negotiate with the insurance company, and I didn't give them definitely what the insurance company offered us, but did tell Morgan Stanley, "What is the best you can do?" and Stanley told us certain terms, and I said, "I am afraid that is not good enough." They said, "If you can do better go ahead. We don't like it, naturally."

Of course, it is to our disadvantage to have a loss in the open market. The price is offered and when the time of offering comes if the market is different the price should be different.

Mr. O'CONNELL. Offhand, I couldn't see anything improper in attempting to get the best price you could get for your securities. I merely wanted to get an idea of what you had in mind. It is a little refreshing to me to find an issuer is really taking a very active part in determining the price at which he can sell securities.

Mr. VAN DER WOUDE. I don't see any harm in it. [Laughter.]

Mr. HENDERSON. I think what Mr. O'Connell means by refreshing is that in all the testimony here, some of it concerning financing, for example, in the interim period between divorcement of J. P. Morgan from their underwriting business and the formation of Morgan Stanley, it was plainly evident that many of the issuers took very little part in the arrangements, and other testimony indicated, as I recall, that frequently the banker would suggest that now was the time to finance. Other testimony this week indicated that the underwriters formed the groups and that it was sometimes 2 to 3 months before they went to the issuer. In your case it seems to be at a bare minimum—at least you took the initiative.

Mr. VAN DER WOUDE. Yes. I haven't had as much experience in the financial market as many other people here, but after all money is a commodity that has its price. It is more or less fixed. In issuing securities, there isn't very much difference. Money is money, and it has a certain value on a certain date, yet it has a different relative commodity market. So it is just playing one's views against the other man's views and hoping your own views may prevail.

Mr. HENDERSON. You say money has a price, but in the prior issue price was put at 99, and at the time van Eck was writing it was 95½.

Mr. VAN DER WOUDE. But there I think you should bear in mind that—at least that is my view—the stock exchange doesn't indicate the true value of money. The stock exchange is in fact subject to all kinds of changes today, and something may happen in 2 or 3 months' time. You may get inflation, and someone may start selling bonds and bonds will go down. My feeling about bonds is you shouldn't look at what your price is today or tomorrow, but should buy bonds from companies you have confidence in, and if you have confidence in the company you can buy those bonds, and that is the extent, whether it is 95 tomorrow and 99 today.

The only investment we have is the pension fund. We have millions of dollars in the pension fund. We don't get every day, the price going up or down. We look to the companies where we have invested our funds.

Mr. HENDERSON. I think I understand the distinction you are making. As a matter of fact, if you got 97 from Dillon, Read, and if you had received and accepted their proposal, you would have got less money for your company, regardless of what did happen in the future in the price of money.

Mr. NEHEMKIS. Mr. van der Woude, do you recall that on or about June 1, 1938, you had occasion to write to a member of your organization, Mr. A. Fraser, at St. Louis, Mo., and in connection with that letter you stated to him as follows [reading from "Exhibit No. 2004"]:

I shall appreciate it very much if you will have your people do all possible to expedite this work and at the same time please do everything you can to keep the deal with Equitable strictly under cover. Their commitment to us is entirely contingent on clearance being given by their counsel on all legal phases and therefore it would be very regrettable if word got about which would offend Morgans in any way, seeing that we are still relying on them in case there is a hitch with Equitable, as well as in case of future public financing.

Mr. VAN DER WOUDE. Yes.

Mr. NEHEMKIS. I offer in evidence the letter from which I have been reading.

(The letter referred to was marked "Exhibit No. 2004" and is included in the appendix on p. 12929.)

SHELL ENDEAVORS TO OBTAIN REDUCTION IN INTEREST RATE FROM EQUITABLE

Mr. NEHEMKIS. Mr. Duhig, do you recall that in the latter part of 1938 and the early part of 1939 interest rates had declined appreciably?

Mr. DUHIG. That is true.

Mr. NEHEMKIS. And in an endeavor to take advantage of this decline, do you recall that Shell attempted to negotiate an adjustment in the interest rate with Equitable?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. I offer in evidence a letter from Mr. Duhig to Mr. van der Woude under date of May 23, 1939.

(The letter referred to was marked "Exhibit No. 2005" and is included in the appendix on p. 12929.)

Mr. NEHEMKIS. At the same time, do you recall, Mr. Duhig, that Shell commenced discussions with Morgan Stanley for the refunding of \$60,000,000, 3½-percent debentures?

Mr. DUHIG. That is right.

Mr. NEHEMKIS. And in this letter from which I now read, by Mr. Duhig to Mr. van der Woude, under date of May 24, 1939, the following is said [reading from "Exhibit No. 2006"]:

I have just had a talk with Ewing and Perry Hall. They will be sending me some figures in the morning, but this is a summary of what they think we could do at today's market—

And there you cite the information. Continuing with this letter, you state:

Ewing feels we should be able to get Equitable down to today's market on our present \$25,000,000 and he does not expect to beat them out on a public issue; but for our \$60,000,000 of 3½'s (in which he feels our best interests would be served by putting ourselves in Morgan's hands) they could save about \$278,000 per annum on new 15-year bonds (not including registration expense) and about \$150,000 per annum on the 20-year.

I offer in evidence the letter from which I have been reading.

(The letter referred to was marked "Exhibit No. 2006" and is included in the appendix on p. 12930.)

Mr. NEHEMKIS. And I will also offer in evidence at this time a copy of the cable to Vanwood, London, by Mr. van der Woude, under date of June 6, 1939.

(The cable referred to was marked "Exhibit No. 2007" and is included in the appendix on p. 12931.)

Mr. NEHEMKIS. Equitable, Mr. Duhig, declined to recognize Shell's request for reduction. Is that not correct, sir?

Mr. DUHIG. They were willing to make some reduction.

Mr. NEHEMKIS. But not quite the interest reduction Shell wanted at the time?

Mr. DUHIG. Not quite what we thought the market entitled us to.

Mr. NEHEMKIS. As a matter of fact, isn't it true that Equitable thought it wasn't quite cricket of Shell to be asking for a reduction in the interest rates so soon after the private deal had been placed?

Mr. DUHIG. They did state that having made a 15-year loan, they thought it was somewhat unusual to be discussing revision of interest 12 months after the deal was made. On the other hand, they had made a very good deal the year before which entailed a million-dollar penalty for calling the loan before maturity, and they did very well on that one year's money they had outstanding, 3½ percent plus a million dollars.

Mr. NEHEMKIS. Accordingly, Shell turned to Morgan Stanley for the refunding of both issues. Is that not correct, sir?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And on June 26, did not Shell reach a tentative agreement with Morgan Stanley for the public offering of \$85,000,000, 15-year, 2½ debentures at 98½?

Mr. DUHIG. To the public. That is correct.

Mr. NEHEMKIS. I offer in evidence a cablegram to Vanwood by R. G. A. van der Woude, under date of June 26, 1939.

(The cablegram referred to was marked "Exhibit No. 2008" and is included in the appendix on p. 12931.)

Mr. DUHIG. I don't remember the exact wording of your question, but I think it is quite clear that 2½ percent debenture at 98½ to the public was what they thought they could do a deal for at that time, subject naturally to correction according to the way the market went and without definite commitment.

Mr. NEHEMKIS. That was the meaning of my question, Mr. Duhig. I think we understood each other correctly.

Was not the bankers' commission fixed at $13\frac{1}{4}$ points, making a net price to the company of $96\frac{3}{4}$?

Mr. DUHIG. No; it was not fixed. That also was subject to further settlement later on. It was suggested that the spread would be between $96\frac{3}{4}$ and $98\frac{1}{2}$, as I remember.

Mr. NEHEMKIS. It was tentatively agreed upon,

Mr. DUHIG. Very tentatively, as I recall.

Mr. O'CONNELL. May I ask a question? What was the distinction between the commitment that Morgan Stanley made for these debentures and the commitment made by Dillon, Read in connection with earlier commitment? As I recall, their letter (referring to "Exhibit No. 1980") to you distinctly stated that they were not legally or morally obligated to pay 97.

Mr. DUHIG. Well, the distinction was that the first one was a letter which was written very close, as I remember, to the time the deal was made, whereas what we are now discussing is what might be done at that particular time subject to the market as it progressed during the course of working out the papers.

Mr. O'CONNELL. Dillon, Read definitely stated in a letter they didn't consider it binding. That seems to me about as tentative or similar to the situation which existed in that later date which was Morgan Stanley.

Mr. VAN DER WOUDE. It is all based on recollection, but my recollection of Dillon, Read, in the financial discussion, was that Mr. Dillon came, in this case, as a matter of fact, to our people in London. He happened to be on the other side, and he went to the head of our company there. Subsequent to the event, our people said, "You had better talk to our people in New York." At the opening of the discussion the distinct understanding was that our people would pass it on to us.

Mr. NEHEMKIS. Morgan Stanley don't write their tentative offers on paper in any event, do they?

Mr. VAN DER WOUDE. No. The understanding may be due to the fact that they went to our London people instead of coming to us in New York.

Mr. HENDERSON. In other words, there was a market-out in the conversation.

Mr. VAN DER WOUDE. In regard to?

Mr. HENDERSON. Morgan Stanley.

Mr. VAN DER WOUDE. I wouldn't call it a market-out. Morgan Stanley said, "We think we can do $98\frac{1}{2}$," but emphasized very strongly that the market might change.

Mr. HENDERSON. That is what I meant. I was just reducing it to the language of the underwriter.

Mr. VAN DER WOUDE. Yes. I do not make myself clear.

Mr. HENDERSON. Your additional explanation which supplements the record would indicate it was your view, by virtue of something other than this letter of Dillon, Read, that Dillon, Read had made a commitment to you, but prior to your explanation, there was to my mind little distinction between the existing terms.

Mr. VAN DER WOUDE. It may have been entirely due to misunderstanding, due to our people in London naturally not being acquainted so well as we are here with the way things are conducted.

Mr. HENDERSON. But you later took the view that Dillon, Read were firmly bound.

Mr. VAN DER WOUDE. Yes, we understand also the view that they had made a clear market and they had to stand by it.

Mr. NEHEMKIS. As a result of changes in the market, Mr. Duhig, did not Morgan Stanley inform Shell on July 13 that a successful issue was impossible at an offering price better than 97½?

Mr. DUHIG. That is correct. I don't know as they said impossible. On the 13th of July they stated that after canvassing the situation, they felt that 97½ to the public was the correct price.

Mr. NEHEMKIS. And did they not agree to reduce the banker's commission from 1¾ to 1½ percent, making a price to the company at 96?

Mr. DUHIG. They had never made it firmly at 1¾ percent, so I don't know that you can say they agreed to reduce it, but they did propose on July 13 that the spread should be 1½ percent, whereas first tentative discussions had been on the basis of 1¾.

Mr. NEHEMKIS. Now, on July 13, Mr. van der Woude, do you recall, cabled to Vanwood at London as follows [reading from "Exhibit No. 2009"]:

Morgan Stanley discussed with us today final terms based on present market conditions and general reaction they received from underwriters and prospective large buyers.

Response from latter has been disappointing and contrary to expectations entertained by Morgan Stanley.

Apparently due mainly to weaker government bond market and resistance against 2½% rate this being first issue at this new low rate and to some extent due to remembrance limited success our last issue.

Under circumstances Morgan Stanley of opinion successful issue cannot be made at better than 97½ with commission 1½% other terms unchanged.

Judging from discussions doubt whether can hold out much hope obtaining better terms though of course after receiving your views we would try to do so.

And as follows:

Our own inclination would ordinarily be to hold out for 98 but we doubt whether it is really case of bargaining and believe Morgan Stanley sincere in their opinion issue could not at present be successful at higher than 97½ and therefore would not undertake issue at higher rate.

I offer in evidence the cable from which I have been reading.

(The cable referred to was marked "Exhibit No. 2009" and is included in the appendix on p. 12932.)

EXECUTION OF PURCHASE CONTRACT WITH MORGAN, STANLEY & CO., INC.

Mr. NEHEMKIS. Was not the purchase contract, Mr. Duhig, signed on July 17, 1939?

Mr. DUHIG. That is correct.

Mr. NEHEMKIS. And the price was 97¾ with a 1½-percent commission.

Mr. DUHIG. It was.

Mr. NEHEMKIS. So that it was 96¼ to Shell.

Mr. DUHIG. Correct.

Mr. NEHEMKIS. I offer in evidence a telegram¹ from R. G. A. van der Woude to Belither, San Francisco, under date of July 17, 1939.

(The cable referred to was marked "Exhibit No. 2010" and is included in the appendix on p. 12933.)

Mr. NEHEMKIS. Mr. Duhig, I show you a copy of a purchase contract covering the \$85,000,000 Shell Union offering, dated July 17, 1939. I ask you to examine this contract and tell me whether you recognize it to be a true and correct copy of an original which was signed by the Shell Union officials in question. This is not covered by the stipulation; that is the reason for the identification.

Mr. DUHIG. This appears to be a copy of the signed document.

Mr. NEHEMKIS. I offer in evidence a copy of the contract identified by the witness.

(The contract referred to was marked "Exhibit No. 2011" and is included in the appendix on p. 12933.)

Mr. NEHEMKIS. Did not the issue meet with poor success, Mr. Duhig?

Mr. DUHIG. It did.

Mr. NEHEMKIS. And on July 20, 1939, do you recall Mr. van der Woude cabling Vanwood at London as follows [reading "Exhibit No. 2012"]:

Yesterdays issue met with slow response and rough estimate indicates underwriters out of \$56,000,000 sold about half while of \$29,000,000 dealer accounts about \$6,000,000 were not taken up and returned to underwriters.

Morgan Stanley disappointed at result but not worried Fullstop.

They expect buying will come in after a while especially if price drops somewhat below issue price though for the present they are supporting the market.

I offer in evidence the cable which I have just read.

(The cable referred to was marked "Exhibit No. 2012" and appears in full in the text on p. 12650.)

Mr. NEHEMKIS. May it please the committee, I ask that the witnesses be dismissed and that I call at this time Mr. Dean Mathey, of the firm of Dillon, Read & Co.

Acting Chairman WILLIAMS. You mean now you are through with these witnesses?

Mr. NEHEMKIS. I am through, finally and for all time.

Acting Chairman WILLIAMS. Mr. Miller has a question before you excuse them.

Mr. MILLER. This question, Mr. van der Woude, relates to a previous question I asked you about the former issue, \$50,000,000 debentures. As I get it here, about half of this issue was unsold. This is the issue you referred to in this memorandum. You state here of \$56,000,000 bonds, about half were sold, while of \$29,000,000 dealer accounts, about \$6,000,000 were not taken up or returned to underwriters.

What happened to the price of that issue in the market of these unsold bonds?

Mr. VAN DER WOUDE. They went down.

Mr. MILLER. Do you remember, Mr. Duhig, to what level they went within the next 30 or 60 days?

Mr. DUHIG. My recollection is that they went to as low as 90.

¹ Testimony above indicates that the commission figure in this telegram should read "1½ %," not "¼ %."

Mr. MILLER. Went as low as 90.

Mr. DUHIG. That is my recollection; I haven't refreshed my recollection on it.

Mr. MILLER. Were these underwriters finally able to dispose of their unsold balances?

Mr. DUHIG. I don't know.

Mr. NEHEMKIS. Mr. Duhig, may I interpose, Mr. Miller? Do you recall that the war had taken place and that the debentures went down one point?

Mr. DUHIG. Yes. They are 96 at the present moment, approximately.

Mr. MILLER. This is July 20; the war hadn't started in July 1939.

Mr. VAN DER WOUDE. They went down. I don't remember how low they went, because I left for England. I was away directly after the issue was made. I went to England for about a month. That is why I can't answer how low they went. They did go down, that is true.

Acting Chairman WILLIAMS. The witnesses are excused.

Mr. NEHEMKIS. Thank you very much, Mr. van der Woude, and you, too, Mr. Duhig, for all your help to us.

(The witnesses, Mr. van der Woude and Mr. Duhig, were excused.)

Mr. NEHEMKIS. Will Mr. Dean Mathey take the witness stand, please?

Acting Chairman WILLIAMS. Let me inquire how long it will take.

Mr. NEHEMKIS. Twelve minutes, sir. I will be through at 12:30. I think it would be more helpful to the committee if we could hear this witness' testimony, because Mr. Stanley, who follows, will proceed on a technical level of discussion.

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in the matter now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MATHEY. I do.

TESTIMONY OF DEAN MATHEY, VICE PRESIDENT, DILLON, READ & CO., NEW YORK, N. Y.

Mr. NEHEMKIS. Mr. Chairman, may it please the committee, I ask you to admit in evidence a stipulation entered into between Mr. Arthur Dean, partner of Sullivan & Cromwell and counsel to The First Boston Corporation, and myself, covering a memorandum by Mr. H. M. Addinsell, dated March 10, 1937.

Acting Chairman WILLIAMS. Will you enlighten the committee as to the substance of this exhibit?

Mr. NEHEMKIS. This exhibit which I offer to you purports to contain the results of a conversation between witness Mathey and Mr. H. M. Addinsell, and it is my intention to examine this witness on the subject matter of that conversation, and as you will see, the evidence that this witness will offer is pertinent to the testimony previously given.

Acting Chairman WILLIAMS. You are offering this for the record?

Mr. NEHEMKIS. I am, sir.

Acting Chairman WILLIAMS. It may be admitted.

(The documents referred to were marked "Exhibits Nos. 2013-1 and 2" and are included in the appendix on p. 12942.)

Mr. NEHEMKIS. Mr. Mathey, will you state your full name and address, please?

Mr. MATHEY. Dean Mathey, Princeton, N. J.

Mr. NEHEMKIS. And you are a partner, are you not, Mr. Mathey, of Dillon, Read & Co.?

Mr. MATHEY. I am vice president and director of Dillon, Read.

THE MATHEY-ADDINSELL CONVERSATION

Mr. NEHEMKIS. I beg your pardon, that is true. I should like to read to you, if I may, Mr. Mathey, a memorandum by Mr. H. M. Addinsell, of the First Boston Corporation, which purports to contain the gist of a conversation that Mr. Addinsell had with you [reading from "Exhibit No. 2013-2"]:

I lunched today with Mr. Mathey of Dillon Read who advised me that the Shell Union Oil Company proposes to issue \$60,000,000 convertible preferred stock, the existing preferred stockholders having the first call to the extent of the amount outstanding: namely \$38,000,000.

The company is having preliminary conversations with Dillon Read & Co. on behalf of the old syndicate, which will be substantially the same although for certain reasons Lee Higginson will be managers of the account along with Dillon Read and Hayden Stone. The company has advised Mr. Mathey they would like to see a 4% preferred stock with a conversion beginning at 40, and Mr. Mathey asked my opinion as to whether this could be done, to which I definitely replied in the negative. He agreed to this and said he thought that if the company would make a 4½% preferred and make it convertible for the first two years right close to the market (33) at, say, 35 he thought it would be doable at a price depending on conditions at the time the issue came out at somewhere between par and 105. I indicated that I thought a 4½% preferred with a conversion right close to the market should be doable at an appropriate price, depending on market conditions at the time. If the negotiations go forward the issue would probably not come for at least six weeks.

Having in mind the tremendous trading proclivities of the management and the experience with the debenture issue, Mr. Mathey is determined to avoid being crowded up by the company with regard to the terms of the set-up and the price.

By "tremendous trading proclivities," Mr. Mathey, you meant Shell's habit, shall I say, of "shopping around?"

Mr. MATHEY. Well, I guess that is as good a way to put it as any. They had been very difficult to work with and to work out our previous deal.

DESIRE FOR "A SOLID FRONT"

Mr. NEHEMKIS. Continuing Mr. Addinsell's memorandum [reading from "Exhibit No. 2013-2"]:

He—

Referring to Mr. Mathey—

feels, especially in view of the fact that the Shell is not as favorably regarded as some of the other oil companies in spite of what he says is its better statistical position as compared, for example, with Texas and Tide Water, and in view of his experience with the note issue, that it is absolutely essential to a successful offering that it be put out on an obviously attractive basis.

He is sure that the company will be shocked at the proposal he has in mind making, and that their first impulse will be to try to go somewhere else. You will recall that the syndicate in the last issue was a pretty comprehensive one and he thinks that the only possible place they might go to is Kuhn Loeb, and there are probably reasons why they would not go even to them. He is anxious, however, to have his group present a solid front to the company and, in effect, agree that if the Shell Union does not trade with the Dillon Read-Hayden

Stone-Lee Higginson group, the members of this group will not join any other bankers who may attempt to form a group to figure on the business. In view of the well-known trading proclivities of the Shell people, I have agreed in principle to Mr. Mathey's suggestion on the theory that if our large and strong group cannot get the business on terms that we feel attractive, we will be better off to be out of the business.

I submit, Mr. Chairman, may it please the committee, that if Mr. Addinsell correctly understood Mr. Mathey, that Mr. Mathey's suggestion came perilously close to constituting a conspiracy in restraint of trade.

Did Mr. Addinsell correctly understand your suggestion, sir?

Mr. MATHEY. Well, now, I think I remember that conversation with Mr. Addinsell, and if I can review the facts there, I would like to present them. Mr. van der Woude came to my office a few days—may I ask the date of that letter?

Mr. NEHEMKIS. Yes. Perhaps you would like to see it. It is March 10, 1937.

Mr. MATHEY. We were negotiating for a preferred stock deal. Mr. van der Woude came to Dillon, Read & Co.'s offices, and I saw him, and he said they wanted a proposition from us and asked us if we would take it up with our group, which consisted of various people he had mentioned, approximately the same group as the previous bond issue.

I discussed this with Mr. Addinsell, who was a member of our group. I felt that they felt by the very situation I was the negotiator for that group, and to be a negotiator for them I had to have them all together with me, I couldn't have them going out on the side talking to them; it was a perfectly normal business transaction amongst partners, they were our partners in this, and as I recall that conversation, it might well have taken place, just as he said, but as I recall it, I said to Addinsell, "Well, now, we are going to sink or swim together on this thing; if you are ready to go ahead, I will go and negotiate."

Mr. NEHEMKIS. That is the reason why you felt that you just had to have a united front, or in view of the well-known "trading proclivities"—I quote from Mr. Addinsell—of Shell you would just sink.

Mr. MATHEY. Well, it would be impossible for us to work out a deal that would be properly offered to the public.

Mr. NEHEMKIS. Mr. Mathey, did you inquire of Morgan Stanley & Co., who was a member of your group, a partner, shall I say, whether they would join you in this united front?

Mr. MATHEY. To the best of my recollection I didn't, and I don't think I talked to many people on that.

Mr. NEHEMKIS. Did you consider it probable that Morgan Stanley might be approached directly by the company at this time?

Mr. MATHEY. No; I didn't.

Mr. NEHEMKIS. When did you first hear that Morgan Stanley was negotiating directly with the company?

Mr. MATHEY. Well, I can't give that information, something prior to the time they negotiated with me, negotiations of the \$25,000,000 issue that the company finally did with the Equitable referred to.

Mr. NEHEMKIS. And from whom did you learn that Shell was negotiating with Morgan Stanley, do you recall?

Mr. MATHEY. No; I think the first time I heard it, it was a matter of Street gossip.

Mr. NEHEMKIS. When Morgan Stanley & Co. invited you to participate in the \$85,000,000 underwriting in July of 1939, under their leadership, did you not decline to accept a participation?

Mr. MATHEY. Yes; we did.

Mr. NEHEMKIS. And do you recall, Mr. Mathey, that all the other members of the 1936 group did accept participations?

Mr. MATHEY. I do, substantially so as I recall the list as I saw it in the paper.

THE CUSTOM OF "CLEARING"

Mr. NEHEMKIS. Mr. Mathey, I don't know whether or not you have been following the testimony which this committee has patiently been hearing for the past several weeks, but the testimony would appear to indicate that it is the custom on the Street for one banking house to decline to hold discussions with a company whose financing has been headed by another banking house without first clearing, and that appears to be the word of art, with the banker who headed the previous issue. Mr. Mathey, did Morgan Stanley clear with you before opening up discussions with Shell?

Mr. MATHEY. I don't know exactly whether you would call it clearing. I can answer your question—

Mr. NEHEMKIS (interposing). May I just interrupt? Am I correct that "clear" is the word of art used on the Street in reference to such matters?

Mr. MATHEY. I think it is. It is used in a general way; they cleared in this respect: Mr. Stanley, and I believe Mr. Hall, called on Mr. Forrestal.

Mr. NEHEMKIS. Mr. Perry Hall?

Mr. MATHEY. Mr. Perry Hall. It might have been just Mr. Stanley. Now, this is the conversation that Mr. Forrestal, as I recall, repeated to me. He said that the Shell people had approached them and wished them to be their permanent bankers and he just thought as a matter of courtesy they should tell us about it, and wanted to know how we felt about it. We said we weren't very happy about it, there was no idea it wasn't cleared one way or the other, it was a courtesy call, they asked us how we felt about it. We said we weren't very pleased with it.

Mr. NEHEMKIS. Would I be correct in understanding that the use of your word "happy" should be regarded as, perhaps, an understatement?

Mr. MATHEY. Well, I think it could be; yes.

Mr. NEHEMKIS. I'm sorry, Mr. Chairman, I have run 4 minutes over the time I promised you. I have no further questions of the witness.

Mr. HENDERSON. I have a question, Mr. Chairman.

Mr. Mathey, we had some discussion the other day which led to an interchange between members of the committee, and I think it was Mr. Swan of Smith, Barney and Mr. Strauss and Mr. Schiff, of Kuhn, Loeb, as to whether investment banking is a business or a profession, and I indicated that it was decidedly of importance to this committee to get the distinction. I think the Wall Street Journal this morning has a very able editorial which contributes to the discussion. I had occasion to say at that time that it was important. I

went on to say something like this: If investment banking is distinctly a profession, then of course it would be guided by a code of some kind, similar to that which I understand pertains in the legal profession. I indicated also that if it were a business, then it was subject, of course, to all the laws regulating competition beginning with the Sherman Act, including the common law, down through the Clayton Act, and the Federal Trade Commission Act.

Do you have any opinion as to whether investment banking is a profession or a business?

MR. MATHEY. Well, I should say, Mr. Henderson, sometimes it is a profession and sometimes it isn't. I think perhaps that question ought to be more clarified among ourselves. I regard it as a profession.

MR. HENDERSON. Then if it is a profession, may I ask you whether what you and Mr. Addinsell proposed to do to enlighten these tremendous trading proclivities would be against the code?

MR. MATHEY. Well, I would not call it a profession, in regard to our dealings with the Shell Union Co. [Laughter.] They have been purely on a business basis, and my relationships with Mr. Addinsell were that of a number of partners sticking together.

MR. HENDERSON. If it is a business—you are an attorney, I believe?

MR. MATHEY. No, sir.

MR. HENDERSON. No legal training?

MR. MATHEY. I studied law at night one year while I was working.

MR. HENDERSON. Then I am afraid I can't ask you, as an expert, whether or not this wasn't an interference with free trade as a business transaction?

MR. MATHEY. Well, Mr. Henderson, that was simply an arrangement with partners, and it wasn't a formal one. I don't know, I am sure I only talked to a few on that score, if anyone else.

MR. HENDERSON. Let's take a similar case, the original equipment business of automobiles, tires particularly. It is a very important piece of business for the tire companies, and, as I understand it from various studies I have made personally, there is quite a bit of shopping around. There is the keenest interest in that particular competition and one company plays against the other. Certainly, in my opinion, if it sometimes has been done in the past as rumor has it, the statute of limitation probably runs on the transactions. If the tire companies got together and agreed they would not do business, say, with the General Motors, it would be distinctly a violation of the laws regulating competition.

If you people got together, your group, which was a very powerful group—it needed to be to handle such situations—wouldn't it be an interference?

MR. MATHEY. I am not a lawyer, Mr. Henderson.

MR. HENDERSON. Let's put it on a layman's terms. Wouldn't it be narrowing the market for their shopping around?

MR. MATHEY. Well, if you will remember the conditions, we were a group. Mr. van der Woude, I know that I was dealing with him. He knew that I was dealing for that group. He asked me to take the question of a preferred stock issue up with that group. He knew them. He considered them a group.

MR. HENDERSON. And you knew before the issue which you handled that there were negotiations with other houses, did you not?

Mr. MATHEY. No; as a matter of fact, I did not. At that time Mr. van der Woude told me that the bankers were going to negotiate a loan. I told Mr. van der Woude in the early part of these negotiations that I thought it was very undignified, that he should be going to our group members separately, and the only way we would go ahead with this business now was that we would deal with him alone for our group. That was understood by him when he came down, and I do remember his saying, "Mr. Mathey, because you are the only one negotiating for the group, you should give us a higher price." [Laughter.]

"THE SOLID FRONT"¹

Mr. O'CONNELL. May I ask a question? If I understood that memorandum of Mr. Addinsell's correctly, one of your suggestions was that, assuming you were unable as a representative of the group to make a satisfactory deal with the Shell Co., the members of the group, even after the deal had fallen through and the partnership, so-called, had been dissolved, would refuse even at that point to deal with them. Is that true?

Mr. MATHEY. I have had that letter and said Mr. Addinsell's conversation was either so or it might well have been, but it was not any agreement at any moment at all. It was just that we would have lunch together and "let's stick together." As a matter of fact, Mr. Addinsell later joined another group, which would indicate again that it was not a very serious matter.

Mr. O'CONNELL. That would indicate to me that your suggestion or proposal to hold the lines was not consummated, but is there a clear distinction between the group who had pending negotiations, since you were the leader, and the agreement not to deal with Shell after the partnership so-called had been dissolved?

Mr. MATHEY. There may be. This was not a serious conversation I had with Addinsell. I had lunch with him, and said, "Let's stick together here. We are partners. Let's sink or swim together." He put that interpretation. Perhaps he did so properly. There wasn't anything sinister in my suggestion, "Let's stick together." I think, under the circumstances, you can quite well put yourself in the same position doing the same things. That may be presuming a little.

Mr. O'CONNELL. It is quite possible. I don't know. I don't know very much about the code that operates in the Street among investment bankers, and I don't know to what extremes they will go, but to my mind, for an investment banker to propose an alliance which would continue after the negotiations, as I said, have broken down, that certainly very definitely narrows the area which the Shell Union Oil Co. would be able to tap for needed money, and it was clearly to me along the line of Mr. Henderson's remarks, at your suggestion, though not taken seriously, as it happened. But had it been seriously taken, the freedom of the Shell Union Oil Co. would have been hampered, and in that instance it would be a restraint of trade. Wouldn't you agree to that?

Mr. MATHEY. I am not a lawyer, again.

Mr. O'CONNELL. I don't think that makes much difference. I don't think it is a legal question.

¹ This subject is resumed from p. 12654, supra.

Mr. MATHEY. I simply can't see how where partners are together—there must be millions of cases of this throughout the country—and say, "We will keep together for this deal."

Mr. O'CONNELL. For this deal, but the deal falls through. At that point you return to the theoretical situation at least of being competitors. Aren't you competitors in the investment banking field?

Mr. MATHEY. Excepting when we are working on a piece of business. I would think it would be perfectly proper for a group of partners to get together and say they will either sink or swim together and if they don't get the business, why it is just too bad.

Mr. O'CONNELL. That is a little vague. I can see a definite distinction between an arrangement under which a group, having been formed in connection with a particular piece of financing would designate a leader or someone to do the negotiating in that group, and during that period of organization just good organization would require that the dealing be held between the organization and the representative of group. But, as I understand, it was proposed here if the negotiation fell through and the group was dissolved, so-called, the former members of the group would refuse to deal with the Shell Union Oil Co.

Mr. MATHEY. Mr. O'Connell, I think that if that had been really intentional you would have seen other evidence. I lunched with Addinsell. That wasn't anything serious about that. I wouldn't say Mr. Addinsell hasn't quoted me correctly. He may have done it. I don't recall the conversation.

Mr. O'CONNELL. Assuming that was the conversation and assuming that was your desire, the entry is over with and the competition broke out in spite of it.

Mr. MATHEY. It does seem to me I did nothing in restraint of trade, but I think I had better perhaps really see a lawyer. [Laughter.]

Mr. HENDERSON. As to the instance, I am raising no question on that. I was using it as a means of getting further clarification as to this business of investment banking, and I had nothing else in the question I raised. As far as I am concerned, you don't have to see a lawyer about it.

Mr. NEHEMKIS. Perhaps the record should show that counsel doesn't expect likewise to talk with Mr. Thurman Arnold during the lunch period. [Laughter.]

Mr. MATHEY. I would like to say to Mr. Henderson, if this has any taint of restraint of trade I don't think it is a common practice. This was a very unusual situation, as I think the committee has seen by the former testimony.

Mr. O'CONNELL. There aren't very many issuers like Shell.

Mr. HENDERSON. I think I ought to say to you, Mr. Mathey, that one of the witnesses before the committee this week prophesied this would be the last investment banking hearing for a long time because letters and memoranda would not in the future be kept. [Laughter.]

Acting Chairman WILLIAMS. The committee will stand recessed until 2:30.

(Whereupon, at 12:45 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The committee resumed at 2:30 p. m. on the expiration of the recess.

Acting Chairman WILLIAMS. The committee will be in order, please.

Mr. NEHEMKIS. Mr. Harold Stanley, will you be good enough to take the witness stand, please?

TESTIMONY OF HAROLD STANLEY, PRESIDENT, AND PERRY E. HALL, VICE PRESIDENT, MORGAN STANLEY & CO., INC., NEW YORK, N. Y.—Resumed

Mr. NEHEMKIS. Mr. Stanley, did not Morgan Stanley & Co. sign a purchase contract on March 7, 1936, under which Morgan Stanley purchased severally \$5,000,000 debentures from Shell at 97?

Mr. STANLEY. I assume that date is correct; around about that time; I accept the date.

Mr. NEHEMKIS. Did you not also sign on or about the same date an agreement among underwriters?

Mr. STANLEY. Yes.

Mr. NEHEMKIS. Now, this agreement provided, did it not, that each of the underwriters might retain such portion of their respective purchases as the manager should determine?

Mr. STANLEY. I think that is correct.

Mr. NEHEMKIS. I am asking you a question about your underwriting agreement. I think I shall have to ask you to give me a more specific answer.

Mr. STANLEY. May I see the agreement, please?

Mr. NEHEMKIS. It is in evidence and was offered. You must have a copy of it with you, don't you?

Mr. JOHN M. YOUNG (Morgan Stanley & Co., Inc.) You said '36, didn't you?

Mr. NEHEMKIS. I did speak of '36.

Mr. STANLEY. You said '38; this is '39.

Mr. NEHEMKIS. Will the reporter repeat the last question?

(The reporter read the last preceding question.)

Mr. NEHEMKIS. Do you recall that?

Mr. STANLEY. That is true in case of the '39 agreement.

Mr. NEHEMKIS. I was asking about the '36 agreement which you entered into.

Mr. STANLEY. Sometime ago. May I say, Mr. Chairman, while we are looking that up, I would like to comment on two things that came up in the testimony this morning, without attempting to refer to the testimony as a whole. There was some discussion as to the relative price that we said the company might issue loans to the public and the price at which they actually did make a loan to the Equitable Life in 1938. The actual difference between our opinion as to what they might have done publicly at that time and the price they obtained from the Equitable was about a half point net, $\frac{5}{100}$ of a point, but of course you realize that the Equitable thing didn't have the advantage, if there are advantages, as there are in my opinion, of a public distribution.

The other matter I would like to refer to is also a matter of price. There is some question as to the price record of the issue which we made in July of the Shell debentures after they were offered to

the public, and were not fully taken by the public, and Mr. Van der Woude and Mr. Duhig didn't have the records of the price action which we had. The bonds stabilized more or less the day after the offering around 96; they were offered at 97¾, and then went down to a price of about 94½ the next month. Then after the war came they went down still further, as all other bonds did, too.

I only mention that because it was left sort of in the air this morning.

I will be glad to accept the statement as correct, Mr. Nehemkis.

THE OPERATIVE EFFECT OF THE 1936 DILLON, READ & CO. UNDERWRITING AGREEMENT

Mr. NEHEMKIS. Do you recall, Mr. Stanley, that that agreement which you entered into as a participant of the group authorized the managers to offer any debentures not so retained to the selling group?

Mr. STANLEY. Not so retained to the selling group, yes.

Mr. NEHEMKIS. In case the members of the selling group did not take up all of the debentures offered to them the underwriters agreed to be liable for any debentures not taken up in proportion to the amounts of their purchases not retained by them. That is to say, in proportion to the amounts of their purchases which were offered to the selling group members; do you recall that?

Mr. STANLEY. I do.

Mr. NEHEMKIS. Morgan Stanley retained no part of its \$5,000,000 purchase; is that correct?

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. In other words, its entire participation was offered to the selling group?

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. There remained, according to a Committee exhibit—and I must apologize, I do not have its number before me, but I shall supply it before the close of this hearing¹—\$34,475,000 unsold debentures in the hands of the underwriting group, and in accordance with the Dillon, Read, Hayden, Stone underwriting agreement the several underwriters were required to take up the unsold debentures in proportion to the amount not retained by them for their own retailing. Consequently Mr. Stanley, Morgan Stanley & Co. was obligated, was it not, to take up \$3,207,000 of these unsold debentures, or 65 percent of its \$5,000,000 purchase?

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. And is it not correct, Mr. Stanley, that Morgan Stanley realized a loss of \$32,755 on its participation in this underwriting?

Mr. STANLEY. That is also correct.

Mr. NEHEMKIS. And is it not also correct that this is the only loss ever realized by Morgan Stanley since the date of its organization?

Mr. STANLEY. I think it is.

Mr. NEHEMKIS. Mr. Hall, I show you a letter from yourself to me under date of November 20, 1939. Will you be good enough to tell me whether this letter bears your signature and was in fact sent by you?

¹ The exhibit referred to is "Exhibit No. 1991-2."

Mr. HALL. It is.

Mr. NEHEMKIS. The letter and attached document identified by the witness is offered in evidence.

(The letter referred to was marked "Exhibit No. 2014" and is included in the appendix on p. 12943.)

THE 1939 SHELL SYNDICATION

Mr. NEHEMKIS. Passing, now, Mr. Stanley, to the syndication of the 1939 issue, in arranging for the distribution of the \$85,000,000 debentures did not Morgan, Stanley form a group of 85 underwriters, including yourself, of course?

Mr. STANLEY. They did.

Mr. NEHEMKIS. And did not these underwriters severally agree, under date of July 17, to purchase from the company the specified amounts of debentures?

Mr. STANLEY. They did.

Mr. NEHEMKIS. I show you a copy of an underwriting agreement with reference to this offering and ask you to tell me whether you identify this as a true and correct copy.

Mr. STANLEY. I do.

Mr. NEHEMKIS. The copy identified by the witness is offered in evidence.

Acting Chairman WILLIAMS. It may be received.

(The agreement referred to was marked "Exhibit No. 2015" and is included in the appendix on p. 12944.)

Mr. NEHEMKIS. The only one of the 11 principal underwriters whose participation in the 1936 issue had been \$2,000,000 or more who was not included in the 1939 issue was Dillon, Read & Co. Is that correct, Mr. Stanley?

Mr. STANLEY. The question was?

(The question was read by the reporter.)

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. Was not the inclusion of the other 10 principal underwriters due in large measure to their previous association with the company as principal underwriters?

Mr. STANLEY. It was; but they happen to be houses of very good standing and very good distributing and underwriting capacity, among the leading houses in the business, and who generally participated in the issues which we managed.

Mr. NEHEMKIS. Mr. Stanley, what considerations in addition to historical relation to the business enter into the determination of what underwriters are included in a syndicate?

Mr. STANLEY. Well, that gets into the question of a group, of which there has been a great deal of discussion in these hearings, at least during the time when I was here a few weeks ago, as to what the group does, really. Various aspects of that I would like to comment on, but I won't try to take too much time. I can do this part of it very briefly and then perhaps come to the other.

First, I am not sure it has been very clear to the committee just what a group is. A group is an aggregation of people who buy the entire issue.

Mr. NEHEMKIS. I am going to ask, if I may interrupt. I think my question was really a very simple one and possibly you did not quite understand what I meant. I don't want you to go into that line of testimony; it is not quite relevant at this point, Mr. Stanley. My question really was this: A manager, such as your firm, has certain considerations in mind when it selects other underwriters to join it in a syndicate. Now, you have already testified—and there has been a great deal of testimony here—that one of the considerations that any manager has to give is the historical relation of a house to a piece of business. Now, there are other considerations. Is not one such other consideration the financial strength of a house?

Mr. STANLEY. That is one.

Mr. NEHEMKIS. And is not another consideration the distributing ability of a house?

Mr. STANLEY. In some cases.

Mr. NEHEMKIS. And those three considerations, some weighing more heavily in certain instances, others less heavily in others, determine whether or not a house is or is not included in a syndicate?

Mr. STANLEY. There is more to it than that, Mr. Nehemkis, and I think you really have got to take a moment to let me try to state very briefly what the group does. A group is formed to purchase an issue and the purpose of that is to spread the commitment of the issue among a good many people, divide and insure against money commitment and to divide and insure against the money risk and the market changes, and thirdly, to get a back-log from some of these people of distributing ability.

Now, then, with that purpose in mind, you select people and the elements that Mr. Nehemkis mentioned are among the main ones. In addition to that there is the question of their standing, whether they do their business well or badly; they may have plenty of capital and not do it well, their judgment of markets and judgment of securities may not be the best; other elements, too, sometimes one thing and sometimes another.

Mr. NEHEMKIS. But substantially the three items which I asked you about are major considerations.

Mr. STANLEY. Well, the standing of the firm, whether they do their business well, was not mentioned.

FAMILIARITY OF MORGAN STANLEY & CO., INCORPORATED, WITH FINANCIAL CONDITION AND DISTRIBUTING ABILITY OF OTHER UNDERWRITERS IN SYNDICATE

Mr. NEHEMKIS. Is it not a fact, Mr. Stanley, that your firm was acquainted with the financial condition of all of the 84 underwriters who composed the syndicate?

Mr. STANLEY. I think to a greater or less degree. We knew more about some than we did about others. We try to keep as familiar as we can with their capitalization and their distributing ability.

Mr. NEHEMKIS. Can you tell me briefly how this information is obtained?

Mr. STANLEY. Sometimes we ask them; sometimes they come in and tell us. They very often come in and tell us how their sales

ability has changed or improved and try to put their best foot forward as showing themselves qualified to larger positions in good business if they can obtain it.

Mr. NEHEMKIS. And this data concerning the financial position of underwriters is kept on file in your firm, changes made in the information from time to time, as the situations altered?

Mr. STANLEY. Well, it is really not kept on file. There is no real record of it. We know pretty well what these people' situation is and we make notes on their cards.

Mr. NEHEMKIS. On the performance record cards?

Mr. STANLEY. Yes; but it isn't made in all cases.

Mr. NEHEMKIS. Does not your firm also keep itself informed of the distributing ability of the various underwriting firms and in particular the 84 in the Shell syndicate?

Mr. STANLEY. Well, I accept that; I would say we keep informed as far as we can, but I wouldn't limit it to the 84 in particular.

Mr. NEHEMKIS. But you did know the distributing ability of the 84 in this syndicate.

Mr. STANLEY. Yes; we thought so.

Mr. NEHEMKIS. And generally you endeavor to keep yourselves informed of the distributing ability of other underwriters and dealers?

Mr. STANLEY. We do.

Mr. NEHEMKIS. With the exception of A. C. Allyn & Co., were not all of the firms selected by Morgan Stanley & Co.?

Mr. STANLEY. You mean in the \$85,000,000 issue?

Mr. NEHEMKIS. In the \$85,000,000 issue. We are addressing ourselves to that issue at this time.

Mr. STANLEY. That is hard to say. I think we had the ultimate responsibility, but there were various names of people that the company suggested to us. In the first place, we included all of the underwriters in the previous issue except 3—that is, there were more than 11, there were 29 or so: Dillon, Halsey Stuart, and Conrad, Bruce & Co., and we offered it to Dillon at the time, and they said they preferred not to have it offered to them, and we offered it to Halsey, Stuart at the same time.

Mr. NEHEMKIS. You say the company, meaning Shell, made certain suggestions as to the inclusion of underwriters, and one of those suggestions was A. C. Allyn, was it not?

Mr. HALL. That is correct.

Mr. NEHEMKIS. And in addition to A. C. Allyn & Co., were any other firms suggested by Shell?

Mr. STANLEY. There were several.

Mr. NEHEMKIS. Can you give me the names of them?

Mr. HALL. I don't know that I can be very accurate in distinguishing, Mr. Nehemkis, because some of them are probably on the list anyway. I remember Lehman Bros. was one, Francis, Bro. & Co. of St. Louis was another; Kalman & Co. of St. Paul; Hayden Stone was mentioned; Reinholdt & Gardner was another, of St. Louis; Ferris & Hardgrove, of Seattle and Spokane; Smith, Moore & Co.; William R. Staats Co.—I remember them being mentioned. I can't say that there weren't others, but those I do remember.

Mr. NEHEMKIS. When you have an opportunity, would you be good enough to send me a statement, which I may incorporate in the record, of the names of the firms that were actually suggested by Shell? ¹

Mr. STANLEY. Of course, it would be a matter of recollection on our part now.

Mr. HALL. I haven't any list of that kind.

Mr. NEHEMKIS. Will you do the best you can?

Mr. HALL. Yes.

Mr. NEHEMKIS. Now the firms that appeared in the ultimate group are those firms which are generally included in the Morgan Stanley underwriting groups which it forms and manages, is that not correct, Mr. Stanley?

Mr. STANLEY. In general, yes; but there were some who I think we wouldn't ordinarily have in as important position as perhaps they were here. One reason was that this entire 29 underwriters, most of whom, if not all, I think we generally have as underwriters, had been in the previous issue and this is a refunding issue and those people were naturally in touch with the securities that were going to be sold, and they could perform a better service than people who were not in touch with those securities.

Mr. NEHEMKIS. But with the exception of those special cases, most of the members of this group generally appear in the groups organized and managed by Morgan Stanley?

Mr. STANLEY. I should think in general they have appeared; also others have appeared. There is no set list. All of these are very good people.

Mr. NEHEMKIS. In the 1936 Shell offering, do you recall, Mr. Stanley, that the underwriters contracted to take up proportionately an amount up to 14 percent of their participations in order to cover defaults by members of the group?

Mr. STANLEY. Yes; I do.

Mr. NEHEMKIS. And do you recall that no such provision appears in the 1939 Morgan Stanley purchase contract?

Mr. STANLEY. Quite true.

Mr. NEHEMKIS. You have testified, Mr. Stanley, that in the offerings of the American Telephone & Telegraph Co., your firm guarantees the several commitments of all of the other underwriters.² Do you recall your testimony on that subject?

Mr. STANLEY. I do.

Mr. NEHEMKIS. I show you an excerpt from the contract with reference to the \$22,250,000 Southern Bell Telephone offering 40-year 3 percent debentures, containing article III. Will you tell me if you recognize this to be a correct transcript of article III of that contract?

Mr. STANLEY. I am quite willing to accept your statement it is.

Mr. NEHEMKIS. And you so identify it?

Mr. STANLEY. Yes.

Mr. NEHEMKIS. The statement is offered in evidence, Mr. Chairman. (The transcript referred to was marked "Exhibit No. 2016" and is included in the appendix on p. 12956.)

¹ Mr. Hall, under date of February 5, 1940, submitted the information requested. It is included in the appendix on p. 13020.

² Hearings, Part 23, pp. 11968, 11981.

Mr. NEHEMKIS. In the Shell offering, however, Morgan Stanley did not guarantee the commitments of the other underwriters?

Mr. STANLEY. That is true.

Mr. NEHEMKIS. Did any of the 84 underwriters participate with Morgan Stanley & Co. in discussions with Shell relative to terms, price?

Mr. STANLEY. No; I think not; but, of course, our discussions with them on behalf of the underwriters represented the combined views, the consensus of the views of major underwriters.

Mr. NEHEMKIS. Did any of the other 84 underwriters discuss with Morgan Stanley price and terms of the proposed issue?

Mr. STANLEY. Oh, yes.

Mr. NEHEMKIS. So that your answer to my previous question is "no," and your answer to the last question is "yes," is that correct, sir?

Mr. STANLEY. That is correct.

ARTICLE II AND IV OF THE MORGAN STANLEY & CO., INC., UNDERWRITING AGREEMENT

Mr. NEHEMKIS. The underwriting agreement¹ contains a provision, being article II, which gives Morgan Stanley & Co. the right—

to reserve for sale and to sell on our behalf any or all of such debentures to dealers—

on such amounts as you shall in your discretion determine. Do you recall that provision, Mr. Stanley?

Mr. STANLEY. I do.

Mr. NEHEMKIS. This provision is usual and customary in agreements among underwriters, is it not?

Mr. STANLEY. Well, there are various kinds of contracts. I am not sure that I would characterize it as usual and customary. It is in certain types of business, and there are various other forms. I think, in general, that particular clause is customary today, although it wasn't a few years ago.

Mr. NEHEMKIS. If I understand you correctly, your answer is that, in general, subject, of course, to variations in draftsmanship, that kind of clause appears in most underwriting agreements, is that true?

Mr. STANLEY. In the case of contracts which have a several undertaking instead of a joint undertaking.

Mr. NEHEMKIS. Now, the underwriting agreement¹ contains another provision, article IV, which provides that "as compensation for your service, we agree," that is to say the underwriters, "to pay you," Morgan Stanley, "on the closing day an amount equal to one-fourth percent of the principal amount." Do you recall that provision, sir?

Mr. STANLEY. I do.

Mr. NEHEMKIS. And that provision appears in all underwriting agreements of Morgan Stanley, does it not?

Mr. STANLEY. A provision for payment to the manager appears in contracts, excepting when they are subunderwriting contracts. The amount of compensation varies a great deal.

Mr. NEHEMKIS. But it is usually one-fourth percent of the principal amount, isn't it?

¹ "Exhibit No. 2015."

Mr. STANLEY. It is one-fourth to three-eighths on long-term or medium-length issues. It may be less on shorter issues.

Mr. NEHEMKIS. And it is that one-fourth percent which has given rise to the jingle—

With Bells on their fingers
And Shells on their toes,
A quarter to Morgan
However she goes.

Mr. STANLEY. I really wouldn't know.

Mr. NEHEMKIS. You have never heard that jingle?

Mr. STANLEY. No.

Mr. HENDERSON. That was in *Fortune*,¹ wasn't it, in connection with an article on investment banking?

Mr. STANLEY. It is very interesting.

You understood my reference to subunderwriting agreements which are not possible under the rules and opinion of the S. E. C., which to my mind is the best way of doing underwriting. They permitted us to do it once, in the case of Consolidated Edison of New York, then they felt it wasn't strictly in accordance with their rules and we haven't done it since. But it is done in railroad issues.

ARTICLE VIII OF THE MORGAN STANLEY & CO., INCORPORATED, UNDERWRITING AGREEMENT

Mr. NEHEMKIS. I do follow you. The underwriting agreement on the Shell offering further provides, does it not, Mr. Stanley, that any debentures reserved for sale to dealers but not purchased by them should be taken up by the underwriters as nearly as practicable in proportion to the principal amount of debentures which each severally has agreed to purchase from the company?

Mr. STANLEY. It does.

Mr. NEHEMKIS. And is that not a provision taken from Article VIII of the underwriting agreement?²

Mr. STANLEY. It is.

Mr. NEHEMKIS. Now this provision is contained in the underwriting agreements in all issues managed by Morgan Stanley & Co., is it not?

Mr. STANLEY. Well, that or a similar agreement, excepting in subunderwriting.

Mr. NEHEMKIS. I am going to repeat my question because I think you can give me a more specific answer. Is not that provision contained in the underwriting agreement in all issues managed by Morgan Stanley & Co.?

Mr. STANLEY. It wouldn't be in subunderwriting. By provision, if you mean that method of determination—

Mr. NEHEMKIS (interposing). That is correct.

Mr. STANLEY. It is general in our contract, except in subunderwriting.

Mr. NEHEMKIS. Thank you, sir. Now, the underwriting agreement customarily used by all other houses provides for the reallocation of unsold bonds in proportion to the amount contributed to the selling group, is that not correct, Mr. Stanley?

¹ See *Fortune*, September 1939, Vol. XX, No. 3, p. 109.

² "Exhibit No. 2015."

Mr. STANLEY. Not all contracts of all other houses by any means. I am afraid this gets into technicalities.

Mr. NEHEMKIS. That is exactly what this hearing is devoted to, the technicalities of underwriting, so feel free to be technical.

Mr. STANLEY. I will try not to be, but—

Mr. NEHEMKIS. (interposing). Now, let me get your answer. Did I understand you to say that you didn't think that underwriting agreements customarily used by all other houses provided other than article VIII of the Morgan Stanley agreement?

Mr. STANLEY. No; I think they do not; some do and some do not.

Mr. NEHEMKIS. Will you tell me which houses that you are familiar with provide as does article VIII of the Morgan Stanley agreement?

Mr. STANLEY. Well, several or most of the other houses, large houses, have a different arrangement than this in the case of registered corporate bond issues. Those same houses who are in the municipal business or the equipment trust business, have contracts covering very large amounts of such securities, perhaps larger than their corporates in some cases, which has an arrangement which has the same effect as this.

Mr. NEHEMKIS. Speaking, however, of corporate bond issues, do you know of any house other than yours which at the present time uses a provision comparable to article VIII?

Mr. STANLEY. In the case of registered corporate bonds I do not, except in the case of subunderwriting.

Mr. NEHEMKIS. Mr. Stanley, you are somewhat elusive this afternoon.

Mr. STANLEY. No, Mr. Nehemkis.

Mr. NEHEMKIS. I want to get your answers as they come. Do I understand you correctly, sir, to have said that you agreed with my first statement that there was no other underwriting house today which, on corporate bond issues, follows substantially the provision of article VIII of Morgan Stanley's underwriting agreement?

Mr. STANLEY. You haven't stated your question in the same way you did before, Mr. Nehemkis.

Mr. NEHEMKIS. That was a recapitulation of what I thought your answer was. If I have not understood it correctly, you repeat it.

Mr. STANLEY. I think that this method of taking unsold bonds that have been offered to the selling group—and I should like to explain to the committee what a selling group is, unless that is perfectly clear.

Mr. NEHEMKIS. Mr. Stanley, I want you to give me an answer to my question.

Mr. STANLEY. Mr. Nehemkis, I am trying to.

Mr. NEHEMKIS. Please proceed.

Mr. STANLEY. You can't tell what bonds come back from a selling group unless you know what a selling group is.

Mr. NEHEMKIS. I think I put to you a straightforward question and I want you to give me a straightforward answer. I want to know to the best of your knowledge—consult your associates if necessary—whether you know of any other American investment banking house which today uses in its underwriting agreements a provision comparable to article VIII of the Morgan Stanley underwriting agreement. In my humble judgment, that question lends itself to a simple answer.

Mr. STANLEY. You have put your question still a third way.

Mr. NEHEMKIS. I am trying to make it easy for you.

Mr. STANLEY. I have answered that question. In the case of municipals—

Mr. NEHEMKIS (interposing). Corporate issues—we are addressing ourselves to corporate issues.

Mr. STANLEY. Registered corporate issues, because railroads are corporate issues, too.

Mr. NEHEMKIS. Registered corporate issues.

Mr. STANLEY. That is simple. I don't know of any other.

Mr. NEHEMKIS. Thank you very much, sir.

Mr. Chairman, I should like to offer in evidence some research undertaken by members of my staff, being a study of 24 underwriting agreements by leading investment banking houses of this country. The reason I was anxious to get Mr. Stanley's answer was because, having studied these agreements, we didn't find anything comparable to article VIII. I have here the actual agreements, and here, sir, excerpts together with an index for the reporter, to those excerpts. May I request that the agreements themselves be placed on file with the committee so that those who may in the future wish to study them will have that opportunity, and that the excerpts be spread on the record of the committee. I now offer them to you, sir.

Acting Chairman WILLIAMS. The excerpts may be admitted for the record and the balance of these exhibits will be filed.

(The underwriting agreements referred to were marked "Exhibits Nos. 2017 to 2040" and are on file with the committee. The excerpts accompanying each agreement were numbered accordingly and are included in the appendix on pp. 12957-12965.)

Mr. NEHEMKIS. Mr. Stanley, under article II of the underwriting agreement (referring to "Exhibit No. 2015") does not Morgan Stanley reserve out of the amount purchased by each underwriter a portion of such participation for offering to the dealers, that is the selling group?

Mr. STANLEY. Reserve bonds; that is correct.

Mr. NEHEMKIS. And the balance is reserved for the retail distribution of the underwriter; is that correct, sir?

Mr. STANLEY. Yes.

Mr. NEHEMKIS. In the Shell underwriting, was not \$28,950,000 debentures reserved for offerings to the selling group?

Mr. STANLEY. I accept that figure, subject to check.

Mr. HALL. Would you mind repeating it?

Mr. NEHEMKIS. The figure is \$28,950,000 debentures reserved for offering to the selling group.

OVEROFFERING TO SELLING GROUP

Mr. HALL. I have a memorandum here which shows the amount retained by underwriters for retail sale was \$56,050,000 and the difference would be the amount reserved for offering by the selling group.

Mr. NEHEMKIS. So the difference would be the figure I first mentioned, namely, \$28,950,000; right?

Mr. HALL. That is correct.

Mr. NEHEMKIS. And \$56,050,000 were reserved for retailing by the underwriters, Mr. Stanley?

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. However, the amount actually offered to the selling group was \$31,250,000, or \$2,300,000 in excess of the amount reserved for the selling group; is that correct, sir?

Mr. STANLEY. That is correct.

Mr. NEHEMKIS. Will you be good enough to explain the reason for this overoffering to the selling group?

Mr. STANLEY. Well, it is simply an overallotment.

Mr. NEHEMKIS. What is the purpose of the overallotment? Is it customary to overoffer to the selling group in your syndications?

Mr. STANLEY. I don't know whether it is customary. It is done quite often. Mr. Hall can say.

Mr. NEHEMKIS. Mr. Hall, suppose I address the question to you. Can you tell me roughly in how many recent offerings by Morgan Stanley you have overoffered to the selling group?

Mr. HALL. I don't know that I could tell you. I know in three of the last four: Louisville & Nashville, Southern Bell, and Shell Oil, and I am not sure whether we did it on the issue of Consumers Power.

Mr. NEHEMKIS. What is the purpose of overoffering to the selling group?

Mr. HALL. In offering a bond issue, Mr. Nehemkis, it is a matter of merchandising a large amount of bonds throughout the country, and those bonds are offered by the underwriters to hundreds of dealers situated in various States throughout the Nation, who in turn reoffer the bonds to their clients. It may very well be that on an issue as large as one of \$85,000,000, that the manager may miscalculate the amount of bonds which might be adapted to any particular market or any particular State, and based entirely on his judgment and experience in selling bonds, he may or may not overallot. If he does overallot it is in the expectation, or I might put it, it is a possible thought in his mind that in some cases bonds will be declined, and he is hopeful that in his overallotment he will come close to gaging what that declination will amount to. In this particular issue we overallotted as you mention, something like \$2,300,000 bonds and as matter of fact, the amount declined was \$9,111,000.

Mr. NEHEMKIS. So that the purpose in the Shell Union offering at least in overallotment was because Morgan Stanley had pretty strong intimations that there were going to be heavy declinations by the dealers; is that not correct, sir?

Mr. HALL. I can't give an answer "Yes" or "No" to the question and I would like to explain, if I may.

Mr. NEHEMKIS. Please proceed.

Mr. HALL. The contract to purchase these bonds from the company, which was signed by the various underwriters, was signed on Monday, July 17, with the expectation that the bonds would be reoffered to the public on Wednesday, July 19. It is true that from the time we signed that contract, namely Monday morning, July 17, and the time of the actual offering on July 19, in our judgment, those who were charged with the responsibility of distributing that issue, we had reason to believe that it would be a difficult selling proposition, and based on that we did overallot in the expectation there would be some declination.

Mr. STANLEY. May I add that I wasn't in New York at the time, Mr. Nehemkis, at the time the deal was signed up on Monday. It is my information from Mr. Hall that the underwriters as a group had every expectation that the issue would be a complete success at the price it was to be offered. It cooled off in the next couple of days; similar bonds went off, like Standard of New Jersey and Texas, and things of that kind, a quarter or half a point, but there has been a lot of talk about pricing in these hearings and it is an awfully wise man that can gage a price to a quarter or half point. You have bonds on the New York Stock Exchange that fluctuate a point a day, but whatever the reasons for the decline in the market, and it wasn't really so much a matter of material decline of the market, as I am informed—I was away at the time—but the feeling became prevalent that the market was very "toppy." This was really about the high point of the bond market, and things were very sensitive; more a matter of feeling that affected marketability than actual change of price.

Mr. NEHEMKIS. Mr. Chairman, may it please the committee, I desire to offer in evidence at this time the list containing the amount reserved to the underwriters. Before doing so I am going to ask Mr. Hall to just glance at this, because this is information which was furnished by Morgan, Stanley to the Securities and Exchange Commission in connection with the issue we are now discussing.

Mr. HALL. There are things I don't remember. I am sure if you say it is, it is all right.

Acting Chairman WILLIAMS. It may be received.

(The document referred to was marked "Exhibit No. 2041" and is included in the appendix on p. 12965.)

CRITERIA USED IN DETERMINING THE AMOUNTS RESERVED FOR UNDERWRITERS

Mr. NEHEMKIS. Mr. Stanley, how do you determine the amounts of reservations for underwriters?

Mr. STANLEY. Well, it comes from experience and knowledge of their relative ability in distribution, and their capital and their general performance record in business over a period of time.

Mr. NEHEMKIS. Due to the noise in the room, I didn't get your answer on that. Could I ask you to repeat it?

Mr. STANLEY. Could the reporter read it?

Mr. NEHEMKIS. Will the reporter please read the preceding question and answer?

(Question and answer read by reporter.)

Mr. NEHEMKIS. Do you consult with the individual underwriters in making up their reservations?

Mr. STANLEY. Perhaps I didn't get the point of your previous question completely. Is the question of the amount of reserve or their original underwriting commitment?

Mr. NEHEMKIS. Amount reserved.

Mr. STANLEY. The same answer applies to that, plus some additional things; for example, Lee Higginson sold a good many bonds previously in Shell issues and had a clientele that was familiar with Shell bonds, and they would probably receive more in this issue than some other issue.

In answer to your last question, we do consult with them usually about what they would like to sell.

Mr. NEHEMKIS. Are there any customary percentages generally reserved for the various underwriters?

Mr. STANLEY. Well, no customary percentages over a period of time. It may work out more or less on the average. There are bound to be cases where it is quite out of line with the average.

Mr. HENDERSON. May I ask a question? In case of overallotment in the market, you are short that many bonds, aren't you?

Mr. HALL. That is correct.

Mr. HENDERSON. Is it usual practice to get the underwriters to give up on the basis of any fixed percent interest?

Mr. HALL. You are speaking, if you do have a shortage of percentage?

Mr. HENDERSON. Yes.

Mr. HALL. That might work in different ways, depending upon the amount of that shortage. In general, if you had a large shortage, it would probably have been established because the overallotment was as I say, 100 percent taken. The underwriters also sold their bonds and you absorb whatever losses there are.

Mr. HENDERSON. You are stabilizing capital. Technically you would be short?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Mr. Mathers, where did you obtain the documents you have?

Mr. LLOYD MATHERS (Securities & Exchange Commission). From Halsey, Stuart & Co.

Mr. NEHEMKIS. New York or Chicago?

Mr. MATHERS. New York.

Mr. NEHEMKIS. Were they furnished to you by an official of that organization?

Mr. MATHERS. They were.

Mr. NEHEMKIS. And you recognize them as documents that are correct?

Mr. MATHERS. Yes.

Mr. NEHEMKIS. Thank you, sir.

As indicative, Mr. Chairman, of the general practice we have been discussing for whatever light may be thrown on the subject, I wish to read and then offer in evidence the documents and files as identified by Mr. Mathers.

This is a telegram over the private wire of Halsey, Stuart to their New York office to Carlson, August 29, 1938 [reading "Exhibit No. 2042-1"]:

Would appreciate if you can find out amount set aside for special sales and also for selling groups in following deals: U. S. Steel, Philadelphia Elec. Union Elec. of Mo., Northern States Pr., 160 million A. T. & T., and 60 million Consolidated Edison.

(Signed) Hough.

And then Carlson wires back to Hough [reading "Exhibit No. 2042-2"]:

Your 3 will check around and advise—

And having checked around, Carlson now proceeds, August 30, 1938, to advise Hough as follows [reading "Exhibit No. 2042-3"]:

Difficult get full story Morgan deals. All they tell an underwriter is what he gives up himself. Had understood this to be case and have had verified by several people including 1st Boston. Morgan Stanley does not arrange special sales in sense of directing underwriters give up certain amounts to certain institutions. They sometimes say at underwriters meetings who are interested and who they would like to see favored with bonds but without designating amounts. Off the record there is gossip about their making more definite suggestions in special cases of underwriters in hock. As for dealer giveups their treatment of underwriters varies greatly. Shields & Graham Parsons say generally get more in S G than in underwriting. Blair say they generally average about 50%. Stanton 1st Boston guesses 40-50% to dealers but purely guess. Herzog at Shields guesses 40% to dealers average large issue. Waiting info from Blair & Dillon other issues.

And then, having further looked around, Carlson, on August 31, 1938, again advises Hough [reading "Exhibit No. 2042-4"]:

Blyth says giveups by them to SG on Morgan Stanley deals run from 45% up.

I offer in evidence the documents from which I have read.

(The telegrams referred to were marked "Exhibits Nos. 2042-1 to 2042-5" and appear in full in the text, except for "Exhibit No. 2042-5," which is included in the appendix on p. 12966.)

Mr. NEHEMKIS. On the morning of July 1, 1939, the individual underwriters were notified as to the amounts of their purchase reserved for offering to dealers and the amounts reserved for their own retail distribution, were they not, Mr. Stanley?

Mr. STANLEY. Yes.

Mr. NEHEMKIS. I wonder if you could briefly describe to the committee the method by which notification is effected, or perhaps you would like Mr. Hall to do it, since he is more familiar with it. Describe the telegraphic procedure, please, if you will.

NOTIFICATION TO UNDERWRITERS RELATING TO AMOUNTS OF DEBENTURES RESERVED FOR OFFERING TO DEALERS AND FOR THEIR OWN RETAIL DISTRIBUTION

Mr. HALL. The procedure is briefly as follows: Having planned, as in this case, to sell the issue on Wednesday morning, the night previous, Tuesday night, telegrams were sent to several hundred dealers throughout the country which I mentioned before, who are in the selling group, telling them the amount of bonds which they are offered, and at the same time telegrams are sent to the underwriters telling them the amount of bonds which they in turn may retain for retail distribution.

It is a brief telegram referring to our previous selling group and underwriting letters and saying that the amount that they may retain is blank principal amount.

Mr. STANLEY. I would like to say a word as to why we do that and why we don't tell these underwriters ahead of time what they shall have for selling purposes. We do it to put everybody on the same basis, make it even as to what they know they have to sell the big fellow and the little fellow over the country; and the original reason why we reserve the right and don't have a definite formula is that we think since we are not in the retail selling at all and since we don't compete from a sales point of view with any of our co-underwriters that we are in a better position to determine for the good of the deal what the relative amounts of these different people should have than if we left it to them. Because one fellow might want a lot and

another fellow might not. In our opinion, when we started in business it was the custom of the retailing houses in the street to retain too much for themselves and to give too little to the selling group around the country. We wanted to get wider distribution, so we established this method of reserving this right.

Mr. NEHEMKIS. At the time you determined these reservations, Mr. Hall, you had already received the reaction from prospective underwriters and large buyers, which indicated that the offering might not be entirely successful. Is that not correct?

Mr. HALL. There again I would like to explain, if I may, Mr. Nehemkis, it is customary when an issue is first filed in registration in the S. E. C. that publicity is given to that fact. The various services, like Moody's, Poor's, send that information throughout the country, plus the fact that the newspapers also publish the information that a certain issue has been filed in the Securities and Exchange Commission. It has become the custom of the various dealers and underwriters throughout the country when they receive that information, to, I think, sometimes as a matter of form, in most cases because they don't even know what the price or terms are, but nevertheless, they do communicate with the house that they believe and understand is going to be the manager.

Now, to be specific, in answering your question, we do not contact the big institutions to ask them what amount they would take or what price they would pay, nor do we contact the dealers throughout the country. I think it is fair to say it rather works, as far as the dealers throughout the country are concerned, the other way, that they make application to us, but then, too, we can't give that too much importance, because it gets to be a matter of form with most of them, and as our record will show many a time we have an application to be included, we do include them and they decline. So we have to take and put our own valuation on how real the inquiry is depending on the amount of the issue, price, and so forth. But I want to make quite clear to you that when we sign a contract, let's say on this Monday to sell on Wednesday, we don't know whether the large institutions are going to buy or not. Sometimes we do, but in a great many cases we don't.

Mr. NEHEMKIS. Isn't it a fact, Mr. Hall, that on July 13, you had received intimations from underwriters and prospective large buyers which should have led you to believe, and which in fact did lead you to believe, that the issue was not going to be entirely successful?

Mr. HALL. No, sir. On July 13, which is the date you gave, maybe you mean another date, as I recall that was the date when I told Mr. van der Woude that we could probably not do a price above 97½. At that time we had every reason to believe that the issue could be successfully done at that price.

Mr. NEHEMKIS. There is in evidence, it was offered this morning, a cablegram from Mr. van der Woude to Vanwood at London, dated July 13, 1939, in which Mr. van der Woude said as follows [reading from "Exhibit No. 2009"]:

Morgan Stanley discussed with us today—

Namely, July 13—

final terms based on present market conditions and general reaction they received from underwriters and prospective large buyers. Response from latter

has been disappointing and contrary to expectations entertained by Morgan Stanley.

Mr. HALL. Well, I don't think that that cable is contrary to what I said, that we indicated that we could not do a price of 98½, but we could do a price of 97½.

Mr. NEHEMKIS. Now, as a result of these intimations were the reservations, Mr. Stanley, larger than they would have been had the success of the issue appeared entirely assured?

Mr. STANLEY. I would like to ask Mr. Hall or Mr. Young to answer that question. I was away.

Mr. NEHEMKIS. You were away, I'm sorry. Did you get my question, Mr. Hall?

Mr. HALL. I did. I would say, and I haven't made comparative figures to answer your question, but just judging from what our general policy is, as far as the underwriters were concerned, we did not allow them to reserve for retail sales on Wednesday any amounts larger than would have been the normal case had we had indications that maybe the issue was going to be highly successful. In other words, we did not weight them with larger amounts of bonds because of any information we had received between the time of the signing of the contract and the time of the original offering.

Mr. NEHEMKIS. Now, of the \$31,250,000 debentures offered to the selling group, \$22,139,000 were accepted by the selling group. Is that not correct, Mr. Hall?

Mr. HALL. Could I have the question repeated? I will have to subtract here to get it.

(The question was read by the stenographer.)

Mr. HALL. Again I am not quibbling in answering the question, but take your figure of \$31,250,000 reserved for the selling group, of that amount \$9,111,000 was declined, but then that would give my figure \$22,139,000. On the other hand, selling group members came back on the offering day and bought additional debentures amounting to \$940,000, and an underwriter as a dealer purchased an additional \$25,000, making the total amount which they took, but not necessarily which they retained, \$23,079,000. In addition, however, several underwriters retained \$19,000 additional debentures, or a total of \$23,123,000.

Mr. NEHEMKIS. I think we both came out with the same results, if I included in my question that amount.

Now, the underwriters were, therefore, obligated to take up the \$5,827,000 of unsold debentures, were they not?

Mr. HALL. That is correct.

OPERATIVE EFFECT OF ARTICLE VIII

Mr. NEHEMKIS. Now, under the terms of the agreement among underwriters, they were obligated to take back these unsold debentures in proportion to their original purchases. Is that correct?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Therefore, each underwriter was required to take an amount of these unsold debentures equal to approximately 6.9 percent of his purchase, that is to say, the proportion which \$5,827,000 bears to \$85,000,000?

Mr. HALL. That is correct.

Mr. NEHEMKIS. For 37 of the underwriters, did not Morgan Stanley reserve for their own retail distribution the full amounts of their original purchases? You can accept my figures or check it.

Mr. HALL. Mr. Nehemkis, I am not at all trying to quarrel with you, I just want to be completely accurately responsive to your question. I am perfectly willing to take your figures if they are figures we have supplied or figures that you have gotten.

Mr. NEHEMKIS. Anything I say in the way of arithmetic is subject to your future confirmation.

Mr. HALL. I am perfectly delighted to take your figures.

Mr. NEHEMKIS. I will repeat the question so we can follow it clearly as we go through these higher metaphysics. For 37 of the underwriters, Morgan Stanley reserved for their own retail distribution the full amounts of their original purchases.

Mr. HALL. I am willing to accept your figures.

Mr. STANLEY. But those were for their respective sales.

Mr. NEHEMKIS. That is right; each of these 37 underwriters was required to take up his proportion of unsold debentures despite the fact that he had already taken down for retail distribution 100 percent of his original purchase. Correct?

Mr. HALL. That is correct. I should like to amplify it, but I shall stick to the question.

Mr. NEHEMKIS. You can make a statement later if you so desire. Each of these 37 underwriters were, therefore, required to take up a total of 106.9 percent of his original purchase.

Mr. HALL. I accept your figures.

Mr. NEHEMKIS. For the sake of illustration, so that you can follow me very specifically, let's turn to the case of The Wisconsin Co: I just happened to pick that because I like the name Wisconsin; it has no significance at all.

Mr. HALL. We like the firm, too.

Mr. NEHEMKIS. Then we ought to get through this beautifully. The Wisconsin Co. underwrote \$750,000 of the debentures. Do you recall that?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Now, Morgan Stanley reserved to The Wisconsin Co. for its retail distribution all of this \$750,000 of debentures which it had underwritten. Do you recall that, sir?

Mr. HALL. No; but I am willing to accept your figures.

Mr. NEHEMKIS. Morgan Stanley, therefore, determined that The Wisconsin Co. was to take down its entire underwriting commitment. Is that correct, sir?

Mr. HALL. You just happened to have picked one name I remember. I won't promise I can remember any other, but I remember they were anxious to get that full amount and had asked for it.

Mr. NEHEMKIS. And they did take down their entire underwriting commitments?

Mr. HALL. They did, and asked for additional bonds.

Mr. HENDERSON. That means some of the 37 underwriters for whom you reserved their entire participation might not have asked for it.

Mr. HALL. It might have been, Mr. Henderson, but generally speaking, most of the people who sign the underwriting contract give indication of what they would like to have in the selling.

Mr. NEHEMKIS. Under the terms of article VIII of the agreement among underwriters,¹ The Wisconsin Co., although it had already taken down all the debentures was, nevertheless, obligated to take down its proportion of any debenture remaining unsold in the selling group. Is that not correct, Mr. Hall?

Mr. HALL. That is correct.

Mr. NEHEMKIS. In other words, The Wisconsin Co. was, therefore, obligated, under the terms of article VIII, to take 75/8500 of \$28,-950,000 or \$255,000 debentures. Is that correct?

Mr. HALL. Only through their own election. If they had said they wished to take no bonds and wished to remain as an underwriter, they would have been in just the position Morgan Stanley was in not retaining bonds for sale.

Mr. NEHEMKIS. Do you happen to know whether my figures are correct on that?

Mr. HALL. I have some figures here I could follow if you didn't put it in fractions, the actual number of bonds.

Mr. NEHEMKIS. Mr. Young, do you want to follow this?

Mr. YOUNG. No; I think you are talking about two different things. They took up 51 additional bonds under the terms.

Mr. NEHEMKIS. That is right. The dealers and underwriters took up for retail \$12,123,000 debentures. Only \$5,827,000 remained to be distributed under the terms of article VIII. Is that correct?

Mr. HALL. That is correct.

Mr. NEHEMKIS. You do not know at this particular moment whether it is correct that The Wisconsin Co. was obligated, under article VIII to take up, in addition to the 100 percent they took down under the underwriting commitment, the additional \$255,000 debentures?

Mr. HALL. That is incorrect.

Mr. NEHEMKIS. What is the actual amount?

Mr. HALL. \$51,000.

Mr. NEHEMKIS. \$51,000 in addition to the amount retailed for sales?

Mr. HALL. Yes.

Mr. NEHEMKIS. In addition, The Wisconsin Co. was obligated for 75/8500 of \$5,827,000, being the unsold bonds, or \$51,750 additional bonds. Is that correct, Mr. Hall?

Mr. HALL. I arrive at the figure \$51,000 that they did take in addition. That is correct.

POSITION OF MORGAN STANLEY & CO. INCORPORATED UNDER ARTICLE VIII

Mr. NEHEMKIS. Suppose we turn now to Morgan Stanley's position under article VIII of the underwriting agreement.² Morgan Stanley does not have any retail organization. That is correct, isn't it?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Hence it reserves no debentures for itself?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Morgan Stanley's original purchase was \$10,-000,000, was it not?

Mr. HALL. It was.

¹ "Exhibit No. 2015."

² *Idem*.

Mr. NEHEMKIS. Whereas upon the formation of the selling group, The Wisconsin Co. became obligated to take an additional 75/8500 of the \$28,950,000 debentures reserved by Morgan Stanley for the selling group?

Mr. HALL. Couldn't we keep saying 51 bonds, which I can follow? I don't understand the fractions. We will admit and you will admit 51.

Mr. YOUNG. The other figure is not right.

Mr. NEHEMKIS. Do you want to take a slide rule and figure that out?

Mr. YOUNG. I have the figures here. It is \$750,000 over \$85,000,000 times \$5,000,000-odd.

You can ask Mr. Ryshpan to multiply it out and get a 51.

Mr. NEHEMKIS. That is what I am speaking of. That is the result of his mathematics.

So Morgan Stanley's liability was reduced to 10/8500 of \$28,950,000 or approximately \$3,600,000. Do you follow me on that figure?

Mr. STANLEY. You misstated yourself, I think. You said 10/85ths; it isn't 10/85ths.

Mr. NEHEMKIS. I will try to repeat it, that Morgan, Stanley's liability was reduced to 10/8500 of \$28,950,000, or to approximately \$3,600,000.

Mr. HALL. I just can't follow his figures. I can say to you that the amount of debentures that Morgan, Stanley had to take up was the amount of their liability, \$691,000.

UNDERWRITING AGREEMENT PROVISIONS WITH REFERENCE TO UNSOLD DEBENTURES IN 1936 DILLON, READ & CO. AGREEMENT COMPARED WITH THE 1939 MORGAN STANLEY & CO. AGREEMENT

Mr. NEHEMKIS. Now the debentures left for reallocation under article VIII was \$5,827,000?

Mr. STANLEY. That is right.

Mr. NEHEMKIS. As you have just indicated, Morgan Stanley & Co. was required to take up only \$691,000 debentures, or 6.9 percent of their original commitment. Is that not correct, Mr. Hall?

Mr. HALL. I will take your figures.

Mr. NEHEMKIS. Now, the more customary provision as regards unsold debentures is that employed in the 1936 issue, managed by Dillon, Read & Co., and Hayden, Stone & Co.,¹ and so the evidence apparently indicates, as you will recall, those underwriting agreements which I offered?²

Mr. STANLEY. Well, but that gets into a different idea back of the business, Mr. Nehemkis.

Mr. NEHEMKIS. Just a moment. Let's follow this through; and as I have indicated, if you, Mr. Hall, or Mr. Young want to make a general statement at the end, you know you are perfectly free and at liberty to do so. Now, under this provision that we have been discussing, if an underwriter had taken down the full amount of his reservation—I beg your pardon, under the Dillon, Read provision that you signed in 1936, if an underwriter had taken down the full amount of his reservation, was he not relieved of any further liability for debentures not taken by the selling group? Do you recall that, Mr. Hall?

Mr. HALL. I believe that is correct.

¹ See "Exhibit No. 2035," appendix, p. 12963.

² "Exhibits Nos. 2017-2040."

Mr. NEHEMKIS. And under this provision Morgan Stanley & Co.'s liability for debentures not taken by the selling group would have been in proportion to the amount reserved for the selling group rather than to the amount of its purchase?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Morgan Stanley would thus have been obligated to take up the proportion that their \$10,000,000 debentures bore to the total of \$28,950,000 reserved to the selling group; is that correct?

Mr. HALL. That is correct.

Mr. NEHEMKIS. Now, under the Dillon, Read underwriting agreement, Morgan Stanley would have been obligated to take up roughly a third, or about \$1,000,000. Would you accept that?

Mr. HALL. I accept it.

Mr. NEHEMKIS. But under your own underwriting agreement you were required to take up only \$691,000 debentures?

Mr. HALL. That figure is correct.

Mr. NEHEMKIS. Now, isn't the effect of the Morgan Stanley agreement to shift the major portion of Morgan Stanley's underwriting liability to the other members of the group?

Mr. STANLEY. Well, Mr. Nehemkis, you could perhaps put it that way, but that isn't quite the picture. The reason that these two different methods of taking bonds back exist is because different people have a different point of view about the business.

Mr. NEHEMKIS. I want you to explain that; but what is the answer to my question?

Mr. STANLEY. These people take back more bonds under our method because they choose to act as sellers.

Mr. NEHEMKIS. That isn't my question, Mr. Stanley.

Mr. STANLEY. It is apropos, I think, to your question, Mr. Nehemkis. We are not sellers; these other people that sell bonds, other firms get paid and expect to make a profit by so doing. We do not let them reduce their liability in the whole account just because they happen to have sold some bonds and have made money by doing it. There are two functions; one is underwriting and one is selling, and the reason it works this way in the case of people who do both things, is they combine both functions, and we don't think a seller is an underwriter as we are.

Mr. NEHEMKIS. What is the answer to my question, Mr. Stanley? Is not the effect of article VIII of the Morgan Stanley underwriting agreement to shift the major portion of Morgan Stanley's underwriting liability to the other members of the underwriting group?

Mr. STANLEY. I wouldn't think so, Mr. Nehemkis. There isn't any shift. The original pro rata responsibility and liability in the account is the proportion to the amounts that people originally bought. We bought \$10,000,000; somebody else, bought five. We maintain those relative liabilities, so long as there are any unsold bonds on that basis. That is the base they started on; that is the base they keep on.

Mr. NEHEMKIS. Now do you know, Mr. Hall, if there have been any instances where underwriters when called upon to take up unsold debentures complained of the basis of allotment?

Mr. HALL. They never have to my knowledge, Mr. Nehemkis, in our business.

Mr. NEHEMKIS. Are you, Mr. Stanley, Mr. Young, all in agreement about the desirability of article VIII?

Mr. STANLEY. I am, and that is one of the things that I have been attempting to refer to very briefly, because—

Mr. NEHEMKIS. You agree with Mr. Hall and Mr. Young about its desirability?

Mr. STANLEY. This method results in obtaining the best distribution.

Mr. NEHEMKIS. What is your answer to that?

Mr. HALL. I believe it is the same.

Mr. NEHEMKIS. Haven't you at times had philosophical discussion between yourselves as to the undesirability of this provision?

Mr. STANLEY. We have had discussions as to whether this is the best method or not, and we have agreed it is.

Mr. NEHEMKIS. I beg pardon?

Mr. STANLEY. We have had discussions as to whether this is the best method or not, and we have agreed it is. We know other people change their contract; we have changed our contract.

Mr. NEHEMKIS. Now let me ask you this question, Mr. Stanley. Are you unaware that there have been complaints made about the inequity, shall I say, of article VIII?

Mr. STANLEY. Well, I think I have heard more complaints about it since this investigation started and through the investigators than I have ever heard before, but I never have had anybody speak to me since we have been in business, complaining about this.

Mr. NEHEMKIS. You mean that no one formally or informally said to you, if you will permit me to say this, "Harold, now seriously speaking, don't you think you ought to get rid of that article VIII?"

Mr. STANLEY. No dealer has ever said that, to my recollection.

Mr. NEHEMKIS. And, Mr. Hall, you have never received any intimation of dissatisfaction with article VIII?

Mr. HALL. I have never had any of the underwriters speak to me directly and say that they disapproved of this form of contract which Morgan Stanley had.

Mr. NEHEMKIS. What is your experience, Mr. Young?

Mr. YOUNG. No one has ever talked to me criticizing it or complaining about it; they have discussed it.

Mr. NEHEMKIS. They have discussed it, and what was the nature of their discussions with you?

Mr. YOUNG. They wanted to know how it worked.

Mr. NEHEMKIS. Haven't you in connection with some of those discussions, Mr. Young, occasionally had someone who called up and said, "Mr. Young, what does this mean? I suddenly find I am stocked with some unsold debentures. I took down everything for which my underwriting commitment called," and what did you say under those circumstances?

Mr. YOUNG. They have never said it quite that way. They wanted to know how the contract worked; they had the contract. Some of these people had not been underwriters before; they had never figured it out.

Mr. STANLEY. It is all in the contract.

Mr. NEHEMKIS. Quite. - It is all there. It is in evidence, too.

Mr. STANLEY. But that isn't the point. It is in the contract, every fellow signs and reads, and the difference is simply the difference

between a joint liability account and several sell-out account, two different kinds of accounts.

Mr. NEHEMKIS. The only alternative, Mr. Stanley, that an underwriter has to not accepting the Morgan Stanley underwriting agreement is to stay out of the Morgan Stanley syndicate, is that not correct?

Mr. STANLEY. Well, he can come in and he has to accept the contract if he comes into our business, but he can avoid the situation that you refer to where he sells and doesn't reduce his liability by his sales. By not being a seller, the same as we, his liability in the total stays just the same as in the other form of account.

Mr. NEHEMKIS. In other words, if an underwriter wants to come in he has to take article VIII? If he doesn't want to take article VIII he doesn't come into the syndicate?

Mr. STANLEY. That is clear enough. I don't see that that means much of anything.

Mr. NEHEMKIS. Let's see if it doesn't; that means that if he doesn't like article VIII and doesn't sign this underwriting agreement that he is deprived of the opportunity of participating in the underwriting of the bulk of the American high-grade bond issues. does it not, Mr. Stanley?

Mr. STANLEY. I don't know what you mean by the bulk of the American high-grade bond issues. I would like to accept the compliment.

Mr. NEHEMKIS. Didn't we have here a couple of weeks ago these great big sheets spread out all over us, showing the underwritings managed by your firm?¹

Mr. STANLEY. But that is not the bulk; we had a certain amount of the business, but it wasn't the bulk of the business.

PURCHASES FOR STABILIZATION

Mr. NEHEMKIS. Morgan Stanley is also empowered by its underwriting agreement to make purchases and sales in the market for the account of the group for stabilizing purposes, Mr. Hall?

Mr. HALL. That is correct.

Mr. STANLEY. As is usual.

Mr. NEHEMKIS. Did not Morgan Stanley and Co. purchase \$592,000 debentures between July 19 and July 25, 1939.

Mr. HALL. Five hundred thousand; I haven't the exact figure.

Mr. NEHEMKIS. And did it not sell \$48,000, leaving this account long \$554,000 on or about July 25?

Mr. HALL. That is correct.

Mr. NEHEMKIS. And on July 25 this account was terminated, was it not, by selling these \$554,000 debentures to Morgan Stanley at 97 $\frac{1}{4}$ which was approximately the cost?

Mr. HALL. Ninety-seven and a quarter is the price. I won't quibble, that is correct.

Mr. NEHEMKIS. Now these \$554,000 debentures could, under the terms of the underwriting agreement, have been delivered to the various underwriters in proportion to their purchases from the company, but this was not done, is that correct?

Mr. HALL. They were not distributed.

¹ Referring to "Exhibits Nos. 1762 and 1763."

Mr. NEHEMKIS. Would you enlighten me as to why this was not done?

Mr. HALL. At the time that that account was terminated, we called the trading account; there were as you say \$554,000 principal amount of debentures in that account. If we had distributed the bonds as you indicate might have been done, it would have meant distributing this \$554,000 bonds among 85 underwriters throughout the country, and in our judgment we felt that in the interests of the account, knowing as we did that some of the underwriters still had unsold bonds, it would serve best to the interests of the account for Morgan Stanley to take them. To give you an idea of how small the division would have been had we divided them, it would have meant that 11 underwriters would have taken 300 bonds; 10 underwriters would have taken 89; and 64 underwriters would have taken up only 165, not quite 3 bonds apiece, and in our judgment we thought that the market reaction would be unfavorable to distribute so widely an amount of \$554,000 bonds; and again, thinking it would be in the interest of the account, Morgan Stanley took them at the list price, less the selling commission of one-half.

Mr. NEHEMKIS. Morgan Stanley also on July 26 purchased in the market \$1,150,000 debentures at an average cost of \$95.27, is that not correct, Mr. Hall?

Mr. HALL. That is correct.

Mr. NEHEMKIS. And do you remember the occasion for these additional purchases?

Mr. HALL. I do.

Mr. NEHEMKIS. And would you be good enough to explain that?

Mr. HALL. We were conscious of the fact that on Tuesday night, when this account was terminated, that very possibly the next morning the market might receive a severe impact if there should be offered in the market substantial amounts of the unsold bonds. In our judgment, we deemed it advisable to do something to stabilize the market the following morning until this back, orderly market was able to sustain itself at whatever level it would recede to. I have a memorandum before me showing that our first transaction began at 8:30 in the morning, and, as you know, probably most of the large buyers would not be in the office at that time, so we came into the market early in order to act as a cushion to ease the market down; in no sense to manipulate it or to endeavor to put it up. The market opened at 96½; we bought bonds there and continued to buy bonds at receding prices until the market reached 96. At that level other buyers came into the market, at 96, and we ceased to buy and didn't buy any additional bonds.

Mr. NEHEMKIS. Now, your position at this time totaled \$2,395,000, consisting of (1) \$691,000, representing your proportionate share of unsold debentures; (2) \$554,000 purchase from the group trading account; (3) \$1,150,000 purchased for your own account in the open market. Does that sum it up?

Mr. HALL. Making a total of \$2,395,000 due; right.

Mr. NEHEMKIS. Right.

Mr. HALL. That is correct.

Mr. NEHEMKIS. These debentures, however, were liquidated at a loss of \$43,056.

Mr. HALL. That is correct.

Mr. NEHEMKIS. However, Morgan Stanley realized a profit of \$51,340 on the underwriting.

Mr. HALL. That is correct.

Mr. NEHEMKIS. You also received a management fee of \$212,500.

Mr. HALL. Correct.

Mr. NEHEMKIS. So your total gross profit was \$263,840, and your net profit \$220,783.

Mr. HALL. If I may be allowed the privilege of making one distinction; it was not profit; it was gross receipts before expenses, taxes, and so forth.

Mr. NEHEMKIS. I was using the more customary accounting verbiage.

Mr. STANLEY. I don't think it is customary.

Mr. NEHEMKIS. I should add for your sake that this included the loss of approximately \$30,000 resulting from the purchase of the \$1,150,000 of debentures in the open market and the debentures taken over for the trading account.

Mr. HALL. A total loss of \$43,000.

EXTENT TO WHICH MORGAN STANLEY & CO., INCORPORATED, IS FAMILIAR
WITH DISTRIBUTING ABILITY OF DEALERS—RESUMED

Mr. NEHEMKIS. Right.

By the way, Mr. Hall, you have a rather detailed knowledge, do you not, of the dealers' distributing ability?

Mr. HALL. Mr. Nehemkis, I would defer to Mr. Young on that. I did have, I think, a few years ago, but I am not in as close touch with them now as I used to be, and Mr. Young is far more qualified to speak.

Mr. NEHEMKIS. Mr. Young, are you not generally in charge of the firm's activities in that respect?

Mr. YOUNG. I shouldn't say so. Mr. Hall and Mr. Emerson and Mr. Day and myself all work on that side of it.

Mr. NEHEMKIS. Morgan Stanley does have a pretty detailed knowledge of dealers' distributing ability, don't you?

Mr. YOUNG. We try to; yes.

Mr. NEHEMKIS. As a matter of fact, you keep fairly complete information about the performance record of dealers, don't you, Mr. Young?

Mr. YOUNG. We do.

Mr. NEHEMKIS. And you were good enough to make up for us some sample cards, the figures having no particular meaning, indicating, however, the scope of the information that is kept on these performance cards.

Mr. YOUNG. We did.

Mr. NEHEMKIS. Do you recall that these are the cards which you were good enough to make up for us?

Mr. YOUNG. Yes; they are the ones.

Mr. NEHEMKIS. Mr. Chairman, would it be possible to have these printed in the record of the committee?

Acting Chairman WILLIAMS. Are you asking that these be printed?

Mr. NEHEMKIS. I would like to, if you have no objection.

Acting Chairman WILLIAMS. They may be received.

(The record cards referred to were marked "Exhibit No. 2043" and are included in the appendix on p. 12967.)

**TESTIMONY OF WILLIAM S. WHITEHEAD, SECURITY ANALYST;
CHARLES H. HUFF, ASSOCIATE UTILITIES FINANCIAL ANALYST;
AND BARROW LYONS, ASSOCIATE FINANCIAL ECONOMIST, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.**

PERFORMANCE RECORDS OF DEALERS KEPT BY OTHER INVESTMENT BANKING FIRMS¹

Mr. NEHEMKIS. Mr. Whitehead, will you take the stand?

I show you similar record cards from Kidder, Peabody & Co. and White, Weld & Co. Were these in fact obtained by you from those organizations?

Mr. WHITEHEAD. They were.

Mr. NEHEMKIS. Thank you very much. I ask that these be printed in the record.

(The record cards referred to were marked "Exhibits Nos. 2044 and 2045" and are included in the appendix on p. 12975.)

Mr. NEHEMKIS. While Mr. Swan was on the stand, he was good enough to identify a performance record card made up by Smith Barney & Co., being "Committee's Exhibit No. 1888." I now offer this in evidence.

Acting Chairman WILLIAMS. It may be received.

(The record card referred to was previously marked "Exhibit No. 1888" and is included in the appendix on p. 12831.)

Mr. STANLEY. Mr. Nehemkis, I would like—

Mr. NEHEMKIS (interposing). Would you mind if I got these all in?

Mr. STANLEY. This is apropos of these offerings. I would like to have the record show we offered the investigators actual cards and not the ones made up as typical.

Mr. NEHEMKIS. I am glad you mentioned that. It was our suggestion that we didn't want actual figures and didn't want actual names; we wanted it more or less as a sample. Thank you ever so much for reminding me about that.

Mr. Huff, will you please take the stand.

Is that a dealer performance card that was obtained by you from the Mellon Securities Corporation?

Mr. HUFF. It is a specimen card made up at my request, reflecting how their cards are made up.

Mr. NEHEMKIS. Thank you very much, sir.

I offer this in evidence.

(The performance card referred to was marked "Exhibit No. 2046" and is included in the appendix on p. 12977.)

Mr. NEHEMKIS. Mr. Barrow Lyons, please.

Mr. Lyons, I show you a specimen card made up by Harriman Ripley & Co. and ask you to tell me whether or not you did obtain this from Harriman Ripley & Co., Incorporated.

Mr. LYONS. That is correct.

Mr. NEHEMKIS. And was there not furnished for you a detailed explanation by Harriman Ripley & Co. of the manner in which their performance records are kept? Is that the document you have in your hands?

Mr. LYONS. In a general way, yes.

¹ The performance record card of the First Boston Corporation was previously introduced as "Exhibit No. 1639-23" and appears in Hearings, Part 22, appendix, p. 11744.

² *Infra*, p. 12535.

MR. NEHEMKIS. I don't know what you mean by a general way. Is that the document or isn't it? You are identifying something.

MR. LYONS. This doesn't entirely explain—

MR. NEHEMKIS (interposing). Mr. Lyons, did you obtain that from Harriman Ripley, or didn't you?

MR. LYONS. Yes.

MR. NEHEMKIS. That is all I want you to tell me.

I offer these in evidence, Mr. Chairman.

Acting Chairman WILLIAMS. They may be received.

(The documents referred to were marked "Exhibits Nos. 2047 1 and 2" and are included in the appendix on pp. 12977 and 12978.)

MR. NEHEMKIS. Mr. George A. Brownell, of the firm of Davis Polk Wardwell Gardiner & Reed, counsel to Morgan Stanley & Co., Inc., was good enough to enter into a stipulation with me concerning a number of documents which I should like to offer in evidence. I hand you now, sir, the stipulation, and as I offer the subsequent documents I will indicate for the record that they are covered by the stipulation.

Acting Chairman WILLIAMS. You are offering this for the record? It may be received.

(The stipulation referred to was marked "Exhibit No. 2048" and is included in the appendix on p. 12982.)

MR. NEHEMKIS. I offer a telegram to Morgan Stanley from H. B. Cohle & Co., and a reply to that telegram by Sumner B. Emerson, vice president of Morgan Stanley & Co.

(The telegrams referred to were marked "Exhibits Nos. 2049 and 2050" and are included in the appendix on p. 12985.)

MR. NEHEMKIS. A letter to Messrs. Surdam & Co. by Morgan Stanley & Co., Incorporated, and I read you one paragraph from this letter because it bears on previous testimony of the witness. [Reading from "Exhibit No. 2051"]:

Our records contain very limited information about your firm. We should like to obtain from you any information you may care to present showing your distributing ability, territory served, etc.

(The letter referred to was marked "Exhibit No. 2051" and is included in the appendix on p. 12985.)

MR. NEHEMKIS. I offer a letter to Mr. John Young from Schwabacher & Co., dated July 14, 1938, which purports to show the ultimate placement of the Standard Oil Co.'s 15-year debentures in which that firm participated.

MR. YOUNG, do you customarily receive letters similar to the one which I now am referring to and which I show you?

MR. YOUNG. Not customarily, Mr. Nehemkis. We do in a great number of cases. Dealers voluntarily write.

MR. NEHEMKIS. And that information presumably is helpful to you to know how the issues ultimately become placed?

MR. YOUNG. That is right.

MR. NEHEMKIS. Offered in evidence.

(The letter referred to was marked "Exhibit No. 2052" and is included in the appendix on p. 12985.)

MR. NEHEMKIS. I now read a letter by John Young to Ernest Dorbritz, of Moore, Leonard & Lynch, Pittsburgh, under date of October 26, 1936 [reading "Exhibit No. 2053"]:

Dear Ernest:

Thank you for your note of October 24, 1936, giving me an analysis of the distribution of your firm of American Telephone and Telegraph Company

Debentures. I must say that it looks to me as if too large a proportion of your sales is going to country banks, which, as you know, we do not consider as the best type of investor under present market conditions.

Mr. Young, have you changed your point of view since that letter was written?

Mr. YOUNG. Country banks at that time were pretty active speculators in bonds, in bond markets, Mr. Nehemkis, and that was after the reserve requirements were raised. It all depends on the bond issues. In some issues it is all right, but in others we don't like to see too large a proportion go to banks.

Mr. NEHEMKIS. Is that the condition since 1936? Are country banks speculating since then?

Mr. YOUNG. That is pretty hard to say. Some of them speculate all the time. Certain of the others have dropped out as a factor in the bond market.

Mr. STANLEY. I might inject that by speculating I understand Mr. Young to mean—he can correct me if he means something different—they don't buy the bonds for permanent investment which is the type of distribution we prefer to have.

(The letter referred to was marked "Exhibit No. 2053" and appears in full in the text on p. 12683.)

Mr. NEHEMKIS. I read now a letter addressed to the attention of Mr. Young, from George V. Rotan Co., dated January 14, 1937 [reading from "Exhibit No. 2054-1"]:

I sincerely hope that our standing with you is not impaired by declining an offering. I figure that we are not paid for any underwriting risk but are expected to do a selling job. If we make an honest effort to sell and do not succeed according to my understanding you would prefer to have us decline rather than to buy the bonds and throw them back in to the market later on.

Now do you recall that you did reply to that letter, Mr. Young, on January 19, as follows [reading from "Exhibit No. 2054-2"]:

You are correct in saying that you are not paid for an underwriting risk but are expected to do a selling job. While a single instance of this type will not affect your record with us, yet frankly I cannot understand why a Bond of this character would not be attractive to investors in your market.

If a number of instances had occurred of such a nature, might it have affected the standing of that dealer with you?

Mr. YOUNG. Well, it would demonstrate to us that he didn't have as good distribution as we had thought he had. That was the Great Northern Railway Co. bond, 30-year, 3¾. Texas has not been a very good market for rail bonds.

Mr. NEHEMKIS. But this dealer was a little bit concerned he might stand in bad and thought he had better write and get on record, I presume?

Mr. YOUNG. Well, I wouldn't say that, Mr. Nehemkis. He knew pretty much what our point of view was when he wrote the letter, as shown in the letter.

(The letters referred to were marked "Exhibits Nos. 2054-1 and 2" and are included in the appendix on pp. 12986 and 12987.)

Mr. NEHEMKIS. A letter addressed to the attention of Mr. William L. Day from Spencer, Swain & Co., by Earle F. Spencer, dated July 19, 1939, with reference to the Shell Union offering. [Reading "Exhibit No. 2055"]:

Dear Sirs:

We exceedingly regret our action taken today in the acceptance of:
\$5,900 SHELL UNION OIL CO.

2½s of 1954

and turning back \$10,000 of these bonds. We have had no success in selling any of them, and are retaining the five bonds as an indication of our endeavor to cooperate to the best of our ability. This is the first time in our history we have declined our full participation in any bond syndicate, but we felt under present business conditions that it was necessary for us to take this action.

We assure you that we do this with great regret, and trust it will not jeopardize our position with you in the future.

(The letter referred to was marked "Exhibit No. 2055" and appears in full in the text on p. 12685.)

Mr. NEHEMKIS. And a letter dated July 19, 1939, from F. L. Dabney & Co., to the attention of William L. Day, Morgan, Stanley & Co., Inc. [reading "Exhibit No. 2056"]:

Confirming our telegram, we are accepting participation for \$10,000 of the SHELL UNION OIL CORPORATION Fifteen-Year 2½% debentures, due July 1, 1954 and are declining the remainder of the amount reserved for us, namely \$40,000.

We are very sorry that we were not able to take our full participation, but in this territory, on account of the high price none of the customers that we would ordinarily have been able to sell them to, were interested.

Although we have sold no bonds up to the present time, we accepted participation for \$10,000 in order to show our appreciation for past favors.

(The letter referred to was marked "Exhibit No. 2056" and appears in full in the text on p. 12685.)

Mr. NEHEMKIS. Another letter, dated July 19, 1939, addressed to Mr. Sumner B. Emerson, from Kerr & Bell, Los Angeles [reading from "Exhibit No. 2057"]:

After thoroughly canvassing our customers it was very disappointing to us to be unable to sell any of the Shell Union Oil 2½% Debentures which you offered us today at Selling Group terms.

As Mr. Kerr and I told you when you called to see us, it is not our policy to take bonds from any syndicate unless we are able to sell them to our legitimate customers. It has come to our attention that some of our competitors have taken down these particular bonds even though they have no prospects of selling them at the offering price, fearing that if they did not do so they would jeopardize their position with you as syndicate managers.

(The letter referred to was marked "Exhibit No. 2057" and is included in the appendix on p. 12987.)

Mr. NEHEMKIS. And a letter to Mr. Sumner B. Emerson from George D. B. Bonbright & Co., dated July 19, 1939. I skip the first paragraph [reading from "Exhibit No. 2058"]:

A few of the banks that did buy the bonds placed their orders at least 10 days ago. I sincerely hope that you will not think we have fallen down on the job in the distribution of one of your deals for lack of real work on it, and that you will not hold this particular record against our future participation in other deals.

(The letter referred to was marked "Exhibit No. 2058" and is included in the appendix on p. 12988.)

Mr. EVANS, please. Mr. EVANS, will you examine this document and tell me whether or not you obtained it from the files of Blyth & Co.?

Mr. LEWIS EVANS (Securities and Exchange Commission). I did.

Mr. NEHEMKIS. The document identified by the witness is offered.

(The memorandum referred to was marked "Exhibit No. 2059" and appears in full in the text on p. 12686.)

Mr. NEHEMKIS. By the way, Mr. Young, doesn't your firm check certificate numbers to brokers for some sixty or ninety days after selling groups are closed?

Mr. YOUNG. No, sir.

Mr. NEHEMKIS. I read you a Memorandum to the Sales Managers of Blyth & Co., November 6, 1935 [reading "Exhibit No. 2059"]:

It is perhaps not generally known by our organization that the performance records of Morgan Stanley go far beyond repurchases on a syndicate bid or free bids at or around the offering price. We are reliably informed that this firm checks numbers through brokers for 60 or 90 days after selling groups are closed (even though bonds may be selling at two or three points premium over the offering price) in order to find out who among the underwriters and selling group members are not selling bonds for permanent placement. Although our records are relatively clean in respect to bonds repurchased during the duration of selling groups, we find that our reputation is not as good regarding our bonds getting in the street soon after selling groups are closed.

Mr. HENDERSON. In a few short years a mythology can grow up about a young firm.

Mr. HALL. I should like to say to Mr. Henderson that he is misinformed.

Mr. HENDERSON. I certainly wouldn't want to take, Mr. Hall, everything that has gone into evidence as gospel truth.

Mr. NEHEMKIS. And I should like at this time to offer a letter to you, Mr. Hall, from Hyams, Glas & Carothers, New Orleans. This letter is dated July 21, 1939 [reading from "Exhibit No. 2060"]:

I certainly feel badly about not being able to sell any of the Shell Union or the Southern Telephone issues. However, people down here simply don't seem to buy those securities. I am sure we could have used some of the Southern Bells if the premium had not been so great, but as it happens, the very day those came out we bought an issue of State of Louisiana Pension 2.30's, 2.50's and 3.00's due in 12 years and reoffered the 3.00's on a 2.65 basis. The issue is one of the very best in the State and still nobody thought that the issue was offered at a bargain price.

I certainly hope that some day this market will catch up to yours so that we can participate in national syndicates the way we did several years ago, but this does not seem to be feasible right at the present. Meanwhile, I am delighted that you won your point in that particular issue in regard to competitive bidding and hope that this present agitation for it will die down.

I have written to Mr. Ripley to ask for a copy of the pamphlet that Harriman. Ripley is issuing on the subject and shall bring it with me to the next Times-Picayune meeting.

With best regards and hoping to see you in California this fall, I am

(The letter referred to was marked "Exhibit No. 2060" and is included in the appendix on p. 12989.)

Mr. NEHEMKIS. A letter to Morgan Stanley & Co., Inc., from Bosworth, Chamite, Loughridge & Co., of Denver, Colo., just one brief statement:

We infer that there were special reasons in relation to both issues why the debentures had to be priced at what appears to the investor as a pretty high price, and we appreciate the fact that your firm has been the champion for the entire investment banking business. We certainly shall continue to put forth our best efforts on both issues.

(The letter referred to was marked "Exhibit No. 2061" and is included in the appendix on p. 12989.)

Mr. NEHEMKIS. May I have an off-the-record discussion for a moment, Mr. Chairman, with you?

(Off-the-record discussion with Acting Chairman Williams.)

Mr. NEHEMKIS. Mr. Huff, will you be good enough to take the stand, please? Before Mr. Huff does this, I have no further questions of the witnesses, and I ask leave of the committee, if it be the committee's pleasure, that they be dismissed.

Acting Chairman WILLIAMS. You may be excused, gentlemen.

Mr. NEHEMKIS. Thank you very much.

(Witnesses Hall, Stanley, and Young were excused.)

TESTIMONY OF CHARLES H. HUFF, ASSOCIATE UTILITIES FINANCIAL ANALYST, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.

Mr. NEHEMKIS. Mr. Huff, I show you a series of exhibits now in evidence, together with their numbers, which you obtained from the files of various companies. I have agreed with the Chair that they would be admitted subject to your identification, and ask you to examine this list of committee exhibits and tell me whether or not you did so obtain them.

Mr. HUFF. I did.

Mr. NEHEMKIS. Just read them over quickly, if you will, please.

Mr. HUFF. The following documents were obtained by me from the files of the First Boston Corporation:

1. A memorandum by H. M. Addinsell, Chairman of the Executive Committee, The First Boston Corporation, dated September 30, 1935, and offered as "Exhibit No. 1698."

2. A memorandum by H. M. Addinsell, dated November 20, 1935, and referring to the Southwestern Bell Telephone Company offering, and introduced as "Exhibit No. 1699."

3. A memorandum relating to Public offerings of Securities by A. T. & T. introduced as "Exhibit No. 1700."

4. A memorandum relating to Southern Bell Telephone Co. \$45,000,000 3¼% 25-year debentures, introduced as "Exhibit No. 1701."

5. A memorandum by H. M. Addinsell dated June 26, 1939 and introduced as "Exhibit No. 1702."

6. A letter from D. R. Linsley, Vice President, The First Boston Corporation, to J. R. Briggs, Vice President, H. M. Byllesby & Co., dated May 18, 1935, introduced as "Exhibit No. 1880."

7. A memorandum headed "Wilson & Co." signed by H. M. Addinsell, Chairman of the Executive Committee and a director of The First Boston Corporation, dated May 16, 1935 and introduced as "Exhibit No. 1881."

8. A telegram from D. R. Linsley to Miles Warner, H. M. Byllesby & Co., dated March 15, 1935, and introduced as "Exhibit No. 1882."

9. A memorandum headed "Wilson & Company" by D. R. Linsley, dated June 27, 1935 and introduced as "Exhibit No. 1885."

Mr. NEHEMKIS. Will you be good enough to give that list to the stenographer so she may incorporate it intact? Thank you very much, sir.

Mr. Richard H. Wels, please.

Mr. Wels was not sworn, Mr. Chairman.

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WELS. I do.

TESTIMONY OF RICHARD H. WELS, ASSISTANT ATTORNEY, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.

Mr. NEHEMKIS. Will you be good enough to tell me whether or not you obtained these two documents from the Mellon Securities Corporation?

Mr. WELS. I did; yes.

Mr. NEHEMKIS. Thank you very much, sir. Would you just read them into the record, please?

Acting Chairman WILLIAMS. I didn't understand the reporter took the other one and I don't see the materiality of taking it down because the document goes in anyway.

Mr. NEHEMKIS. Thank you very much, sir.

(The statement handed to the reporter was as follows:)

The following documents were obtained by me (Witness Wels) from the files of Mellon Securities Corporation:

1. A memorandum by C. L. Austin on the Koppers Company \$25,000,000 First Mortgage and Collateral Series A 4 percent Trust Bonds, due November 1, 1964, introduced as "Exhibit No. 1863."

2. A memorandum by C. L. Austin on the financing of the Jones and Laughlin Steel Corporation, dated August 17, 1936, introduced as "Exhibit No. 1864."

Mr. NEHEMKIS. We have one witness who won't take probably more than 20 minutes or so. May I have the committee's indulgence to call him? This concludes our entire presentation.

Acting Chairman WILLIAMS. Couldn't you make it 15?

Mr. NEHEMKIS. I will do the best I can. I will put all the pressure I can on the witness. Dr. Altman, take the stand, please.

TESTIMONY OF DR. OSCAR L. ALTMAN, INVESTMENT BANKING SECTION, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.

Mr. NEHEMKIS. Dr. Altman has previously been sworn. Dr. Altman, it is your intention to testify this afternoon on concentration in the management, underwriting, and sale of registered bond issues since 1934, is it not?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. And you will have occasion to offer several tables during the course of your testimony, will you not?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. And you will have occasion to offer several charts during the course of your testimony, will you not?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. Were these charts and tables prepared under your direction?

Dr. ALTMAN. They were.

Mr. NEHEMKIS. Are they based upon statistical data which you believe to be authentic and reliable?

Dr. ALTMAN. They are.

Mr. NEHEMKIS. You have had a number of discussions, have you not, with me concerning this material?

Dr. ALTMAN. Yes; I have.

Mr. NEHEMKIS. Despite those discussions, the opinions and evidence which you will offer this afternoon are your own best judgments and your opinions; is that correct?

Dr. ALTMAN. That is right.

Mr. NEHEMKIS. Will you be good enough to proceed, Dr. Altman, indicating the charts and the data that you wish to present to illustrate your testimony.

Acting Chairman WILLIAMS. In that connection, do the charts themselves show on their face the source of the information?

Dr. ALTMAN. Yes, they do. May I ask, Mr. Chairman, that the easel at the back of the room be set up so that the wall charts which I shall have to offer from time to time may be exhibited for the pleasure of the committee?

Mr. NEHEMKIS. It is being done, Dr. Altman. Will you proceed, Dr. Altman?

Dr. ALTMAN. I have been asked to discuss concentration in the management and underwriting of registered bond issues and in the type of security distribution effected by the investment banking mechanism. It will simplify the discussion to review at the outset the terms which are commonly used in this connection.

DEFINITION OF TERMS

Dr. ALTMAN. What is commonly thought of as underwriting includes two separate and mutually exclusive activities:

On the one hand, investment bankers may insure the sale of a security issue. That is, they may contract to purchase from an issuing company the balance of a security issue which was offered to, but not purchased by, the offerees.

On the other hand, investment bankers may agree to purchase an entire issue of securities from an issuing company for resale to investors. This is by far the more common type of underwriting activity.

The work involved in investigating, setting up and distributing an issue is handled by the manager of the issue, or by the managers of the issue, as the case may be, who are one or more members of the underwriting group, sometimes called the participating group. From time to time during this discussion reference will be made to the value of the issues managed by various investment banking firms. In all such cases, the amount of the issues managed will be equal to the total of the face values of the issues for which the firm acted as manager. If the issue was handled by two or more co-managers, each firm will be said to manage its stated share of the amount of the issue.

The several purchasers of a security from the issuing company constitute the underwriting group. The amounts of an issue which the underwriters purchase severally from the issuer are called their participations.

In order to secure better or wider distribution, the underwriters of an issue almost always ask other investment banking firms to take part in selling the securities to their investors. The selling or distributing group thus consists of the underwriters who reserve part of their participations for wholesale or retail distribution, plus these additional firms. In the usual underwriter's agreement the manager is given the power to determine how much shall be reserved to the individual underwriters out of their underwriting participations for wholesale or retail distribution, and to determine how much shall be offered to other dealers.

CONCENTRATION IN MANAGEMENT OF ALL REGISTERED ISSUES

Dr. **ALTMAN**. Under the provisions of the Securities Act of 1933, most of the securities issued by business enterprises in the United States must be registered with the Securities and Exchange Commission. All foreign securities offered in the United States, including securities issued by foreign governments, must be registered.

The securities which need not be registered—and I will summarize these very briefly—are:

1. Securities issued or guaranteed by the United States Government or its agencies.
2. Securities issued by States or their political subdivisions or instrumentalities.
3. Securities issued by any banking institution.
4. Securities of common or contract carriers, the issuance of which is subject to section 20a of the Interstate Commerce Act.
5. Securities not sold in interstate commerce.
6. Securities not publicly offered.
7. Certain other types of securities whose importance is relatively slight.

Total issues offered for cash from January 1934 through June 1939 amounted to \$36,100,000,000.¹ Of this total, \$9,600,000,000 was registered with the Securities and Exchange Commission, while \$26,500,000,000 was not so registered.

In the category of unregistered issues were included approximately \$16,000,000,000 of securities issued by the United States Government and its instrumentalities; \$6,000,000,000 of securities issued by States and their subdivisions; \$1,600,000,000 issued by contract or common carriers; and \$1,000,000,000 issued by banks and by educational, religious, charitable, and other nonprofit institutions.

Securities to the amount of \$9,600,000,000 were registered with the Commission. In this connection, I would like to summarize the material dealing with the methods of offering security issues and the types of securities offered, with two tables. The first, entitled "Securities Offered for Cash, by Type of Offering, January 1934-June 1939," and the second, entitled "Securities Offered for Cash, by Type of Security, January 1934-June 1939."

Mr. **NEHEMKIS**. Dr. Altman, are these the tables to which reference has been made?

Dr. **ALTMAN**. They are.

Mr. **NEHEMKIS**. And the source of the data for these two tables, Dr. Altman, is what?

Dr. **ALTMAN**. They are prepared from records either in the possession of the Securities and Exchange Commission or from other published records, or from, in some cases, other sources which are available to the Commission.

Mr. **NEHEMKIS**. The two exhibits identified by the witness, Mr. Chairman, are offered in evidence.

Acting Chairman **WILLIAMS**. They may be received.

(The tables referred to were marked "Exhibits Nos. 2062 and 2063" and are included in the appendix on p. 12990.)

¹ See "Exhibit No. 2062," appendix, p. 12990.

Mr. O'CONNELL. Before you continue, it is indicated these are securities offered for cash?

Dr. ALTMAN. Yes.

Mr. O'CONNELL. Does not include refunding issues?

Dr. ALTMAN. Refunding issues would generally be offered for cash; the term "offered for cash" attempts to exclude certain issues where you have securities offered for exchange, where no cash is forthcoming.

Out of the \$9,600,000,000 of registered issues more than \$9,200,000,000, or 96 percent, were offered through and managed by investment banking syndicates. The major part of these managed registered issues were handled by a small number of firms. Although there were 730 members in the Investment Bankers Association in the United States in October 1938, 38 firms managed 91 percent of the \$9,200,000,000 of registered managed issues. This is more completely set forth in a table entitled "Amount and Percent of Registered Bond and Preferred Stock and Common Stock Issues Managed by Selected Investment Banking Firms, January 1934-June 1939."

Mr. NEHEMKIS. Dr. Altman, I show you the table to which you have referred and ask you to tell me whether this in fact is that table.

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And, in a general way, what is the source of the data which appears on this table?

Dr. ALTMAN. This table was prepared by the Securities and Exchange Commission from data on file with them.

Mr. NEHEMKIS. It is offered in evidence, Mr. Chairman.

(The table referred to was marked "Exhibit No. 2064" and is included in the appendix on p. 12991.)

Mr. NEHEMKIS. Will you be good enough to proceed, sir?

Dr. ALTMAN. Moreover, six firms in New York City managed \$5,300,000,000, or 57 percent* of the total registered issues managed by investment bankers. These six firms were [reading from "Exhibit No. 2064"]:

Morgan Stanley & Co., Incorporated, \$2,142,000,000, 23.2%.

The First Boston Corporation, \$986,000,000, 10.7%.

Dillon Reed & Co., \$680,000,000, 7.4%.

Kuhn, Loeb & Co., \$618,000,000, 6.7%.

Smith, Barney & Co., \$472,000,000, 5.1%.

Blyth & Co., Inc., \$388,000,000, 4.2%.

Fourteen other New York City firms managed \$1,970,000,000, or 21 percent, of the total.

Eighteen firms located outside of New York City managed \$1,114,000,000, or 12 percent, of the total. All the other investment bankers in the United States—and it should be repeated that the Investment Bankers Association had 730 members in October 1938—managed \$862,000,000, or 9 percent, of the total.

Investment banking firms, like other business enterprises, specialize their activities. Some specialize in the flotation of bonds, while a few are associated relatively more with the flotation of stocks. There is also specialization with regard to industries, and with regard to size of issues. Finally, the business of different investment banking firms may be distinguished with reference to the quality of their security issues.

Investment banking firms show differences between their bond and stock underwritings. For example, bonds constituted 94 percent of

the \$2,100,000,000 of registered securities managed by Morgan Stanley & Co., Inc. Bonds constituted 86 percent of the \$6,200,000,000 of securities managed by 37 other leading firms—19 within New York City and 18 outside New York City—while they constituted only 49 percent of the \$862,000,000 of securities managed by all other firms.

This material is summarized in a table called "Distribution Among Bonds and Preferred and Common Stock in Registered Issues Managed by Selected Investment Banking Firms, January 1934–June 1939." This table was prepared by the Securities and Exchange Commission.

Mr. NEHEMKIS. Dr. Altman, is this the table to which you have referred?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. I offer the table in evidence.

(The table referred to was marked "Exhibit No. 2065" and is included in the appendix on p. 12992.)

Mr. LUBIN. In order that the significance of the table might be more easily understood, could you tell us what proportion of the total issues floated by these firms were stocks as compared to bonds?

Dr. ALTMAN. Which firms, Mr. Lubin?

Mr. LUBIN. The total figure you have just mentioned.

Dr. ALTMAN. For all firms?

Mr. LUBIN. Yes.

Dr. ALTMAN. For all firms, the figures were as follows: 84 percent of the total consisted of registered bond issues; 10.4 percent consisted of preferred-stock issues, and 5.2 percent consisted of common-stock issues, all of them making up \$9,233,000,000 of securities.

Mr. LUBIN. In other words, the very nature of the flotations would almost automatically lead to the conclusion shown in the table you have just submitted.

Dr. ALTMAN. Except that some firms do more registered bond issues than others, while some other firms do relatively more in preferred and common-stock issues. However, the data are clear enough that for the whole period substantially 85 percent of all registered issues were registered bond issues.

QUALITY OF REGISTERED BONDS MANAGED BY SELECTED FIRMS: ALL INDUSTRIES

Dr. ALTMAN. What quality of registered securities did various investment banking firms manage? I propose to present data with reference to the distribution of registered bond issues managed by investment banking firms, classified by industry and quality of the bonds. I shall confine the analysis to \$7,400,000,000 of bonds managed by 38 leading firms in the period from January 1934 through June 1939. This amount represents 95 percent of all registered-bond issues managed by all firms during the period.

The ratings of bonds used in this analysis are those of Moody's Investors Service when these were available. Where Moody's ratings were not available the equivalent ratings of Poor's Investors Service or of the Standard Investors Guide were used. For nine issues the ratings of Poor's Investors Guide were used and for one issue the rating of Standard Investors Service was used. Moody's

Investors Service divides bonds into the following groups: Aaa, Aa, A, Baa, Ba, B, and so forth. Aaa is, of course, the highest grade; Aa, second grade; and so on. For the purposes of this analysis, bonds will be divided into the four highest groups, and all other bonds will be included in the "below fourth grade" group. The four highest grades, as rated by Moody's and by Poor's, are eligible for bank investment.

Here I should like to offer a chart and a table, each bearing the title "Quality of Bond Issues Managed by Selected Investment Banking Firms, January 1934-June 1939: All Industries."

Mr. NEHEMKIS. Dr. Altman, I ask you to identify the table to which reference has been made.

Dr. ALTMAN. This is the table which I have just mentioned, and this table is the source for the chart which you now see.

Mr. NEHEMKIS. May it please the committee, I offer in evidence the table and chart identified by the witness.

(The chart referred to was marked "Exhibit No. 2066" and appears on p. 12694. The statistical data on which this chart is based are included in the appendix on p. 12993.)

Mr. NEHEMKIS. Will you proceed, Dr. Altman?

Dr. ALTMAN. May I explain briefly how this table and chart were constructed and how the subsequent tables and charts on this same subject were constructed?

The percentage of the registered managed bond issues is shown separately for each one of six New York City firms, which are distinguished by different types of cross-hatchings. The six firms which are shown separately are Morgan Stanley & Co., Inc., The First Boston Corporation, Kuhn, Loeb & Co., Dillon, Read & Co., Smith Barney & Co., and Blyth & Co., Inc. Then a separate group consisting of fourteen other New York City firms is shown on the chart.

I will not stop at this point to read the names of these fourteen other firms, but accompanying every one of the charts to which reference has been or will be made there is a table from which the chart was drawn, and every one of those tables contains a list of these 14 other New York City firms.

In addition, there is a group on the chart referring to 18 firms outside of New York City, and again, the table accompanying each chart will identify the 18 firms in that group.

I might say that in this chart and in subsequent charts dealing with the same subject the group remains constant and the period remains the same.

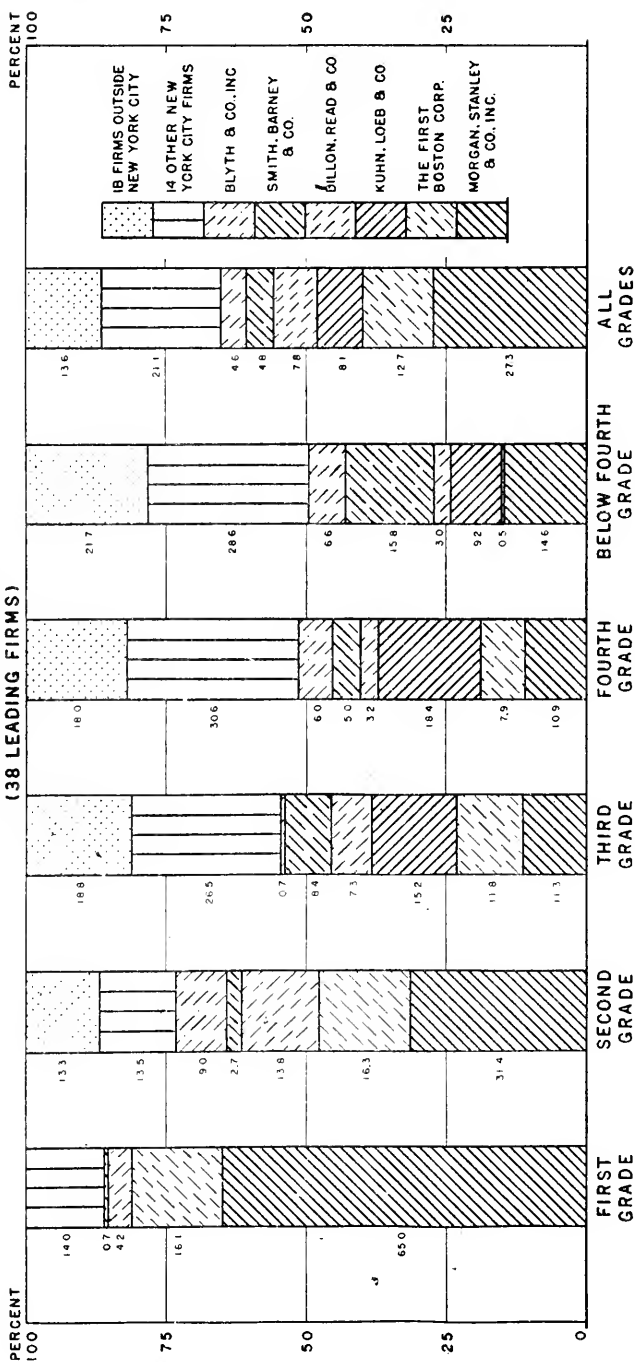
During the five and a half year period in question, namely from January 1934 through June 1939, the six leading New York City firms managed 65.3% of this sample of registered managed issues of \$7,400,000,000. These may be seen from the bar at the right, which reflects the distribution of management for all industries, for all grades of securities taken together. Reading from the right-hand column, we see that Morgan Stanley & Co., Incorporated managed 27.3 percent of all these issues; The First Boston Corporation, 12.7; Kuhn, Loeb & Co., 8.1%; Dillon Read & Co., 7.8%; Smith, Barney & Co., 4.8%; and Blyth & Co., Inc., 4.6%, so that these six New York firms managed 65.3% of these registered bonds.

EXHIBIT No. 2066

QUALITY OF BOND ISSUES MANAGED BY INVESTMENT BANKING FIRMS

ALL INDUSTRIES

JANUARY 1934 - JUNE 1939 (38 LEADING FIRMS)



DS-1368 PREPARED BY SEC. & EACH COMM.

Now I call your attention to the first five columns in this chart, which set forth the proportion of the bonds in each quality grade, as previously defined, managed by each of the 6 firms, by 14 other New York City firms, and by 18 firms outside of New York City.

The bar at the left reflects the distribution of the management of first-grade bond issues in all industries. The first-grade securities amounted to \$1,300,000,000 during this period. Morgan Stanley & Co., Inc., shown in the bottom segment, managed 65% of all such first-grade issues, although by comparison with the last bar, namely "all grades," we see that they managed 27% of all issues of all grades.

Notice that none of the 18 leading firms outside of New York City managed any first-grade bond issues.

The First Boston Corporation managed 16% of all first-grade issues, and it is noteworthy that both Kuhn, Loeb & Co. and Blyth & Co. were not represented in the first grade bar.

Mr. NEHEMKIS. You mean, as managers?

Dr. ALTMAN. Yes; as managers.

Mr. NEHEMKIS. The 18 leading New York firms together managed 85% of all the first-grade issues, as compared with 65% of all issues of all grades. It is clear from the chart that the degree of concentration of management of registered bond issues by the six New York City firms decreases as the quality of the security decreases. In other words, as we go from the first grade to the second grade and then through the lower grades, the relative proportion of the registered bonds managed by the 18 firms outside of New York City and by the remaining 14 New York City firms increases. Thus while the 18 firms outside of New York City managed none of the first grade issues, they managed 13% of the second grade issues, the second bar on the chart, 19% of the third grade issues, 18% of the fourth grade issues, and 21.7% of all issues below the fourth grade.

This chart and table which accompanies it were prepared to cover as large a segment as possible of the investment banking industry for as long a period as possible since the Securities Act. The data in the table relate to the period from January 1934 through June 1939. The data on concentration in the management of registered bond issues, therefore, tend to understate the role of Morgan Stanley & Co., Inc., which was incorporated on September 5, and opened for business on September 15, 1935. If the relative amounts of registered bond issues managed by our thirty-eight leading firms be considered for the period from September 16, 1935, through June, 1939—that is for the period during which Morgan Stanley & Co., Inc., was in the investment banking business—it will be found that Morgan Stanley & Co. managed not 27% of all issues of all grades, but 32% of all issues of all grades; and that this firm managed not 65% of all first grade issues, but 81% of all first grade issues. These data are summarized in the table called "Amount and Percent of Registered Bond Issues of Each Quality Grade Managed by Morgan Stanley & Co., Inc. from Organization to June 30, 1939."

Mr. NEHEMKIS. Is this the table to which you have referred, Dr. Altman?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And the source of this table is, Dr. Altman, what?

Dr. ALTMAN. This table is based upon data which was prepared for the Investment Banking Section of the Securities and Exchange Commission.

Mr. NEHEMKIS. I offer this table identified by the witness.

(The table referred to was marked "Exhibit No. 2067" and is included in the appendix on p. 12994.)

Mr. NEHEMKIS. Now proceed, Dr. Altman.

Dr. ALTMAN. The chart and tables already introduced into evidence contain data on the relative importance of various investment banking firms in the management of \$7,400,000,000 of registered managed bond issues for all industries.¹ It has been suggested, however, that investment banking firms are often specialized with regard to the industrial fields in which they underwrite securities. Hence, to assay more clearly the relative importance of the various firms and of the quality of the issues they manage, it is essential to treat various industries separately.

The \$7,400,000,000 of registered managed bond issues have, therefore, been divided into the following four groups:

(1) Manufacturing companies, whose securities constituted 26.4% of the total.

(2) Electric light and power, gas and water companies, whose securities constituted 50.9% of the total.

(3) Transportation and communication companies, whose securities constituted 10.6% of the total.

(4) And all other issues, which aggregated 12.1% of the total.

BONDS OF MANUFACTURING COMPANIES

Dr. ALTMAN. I propose now to deal with the distribution of management of registered bond issues for manufacturing companies, and in this connection I offer a chart and a table accompanying it entitled "The Quality of Bond Issues Managed by Investment Banking Firms, January 1934 to June 1939," subtitle "Manufacturing Companies."

Mr. NEHEMKIS. Dr. Altman, is this the table to which you have referred.

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And the source of this is as previously indicated?

Dr. ALTMAN. As previously indicated.

Mr. NEHEMKIS. The table and chart identified by the witness are offered in evidence, Mr. Chairman.

Acting Chairman WILLIAMS. They may be received.

(The chart referred to was marked "Exhibit No. 2068" and appears on p. 1267. The statistical data on which this chart is based are included in the appendix on p. 12996.)

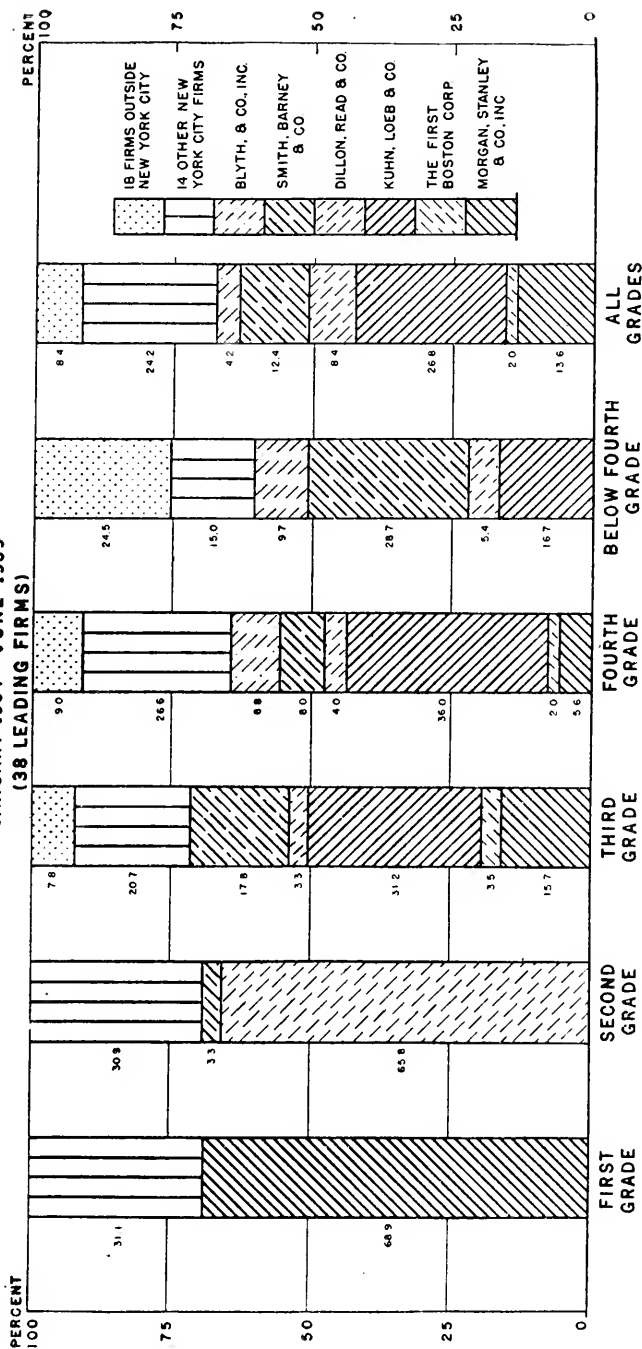
Dr. ALTMAN. It will be apparent from this table and chart that Kuhn, Loeb & Co. managed the largest part of all the registered bond issues of manufacturing companies of all grades. Six New York City firms, to which reference has been made, together managed 67.4% of all manufacturing company registered bond issues of all grades, and twenty New York City firms managed 91.6% of all such securities. It should be noticed, however, that the relative im-

¹ See "Exhibit No. 2066," *supra*, p. 12694, and appendix, p. 12993.

EXHIBIT No. 2038

QUALITY OF BOND ISSUES MANAGED BY INVESTMENT BANKING FIRMS MANUFACTURING COMPANIES

JANUARY 1934 - JUNE 1939
(138 LEADING FIRMS)



portance of the various firms in the different quality grades is different from that for the group of manufacturing securities as a whole. In grade one, for example, we find that Morgan, Stanley & Co., Inc. managed 68.9% of the securities of manufacturing companies. In grade two, Dillon Read & Co. managed 65.8% of manufacturing company bonds. None of the eighteen firms outside of New York City managed any first or second grade registered manufacturing bond issues.

It has already been suggested that the relative importance of Morgan Stanley & Co., Inc. is better measured for the shorter period September 16, 1935, to June 30, 1939, than for the period covered by this chart. The issues managed by Morgan Stanley & Co., Inc. constitute only 17% of the total manufacturing issues for the period of its business life, compared with 14% for the full period as shown in the chart, but since the firm has been organized it has managed all of the first-grade issues in this field.

Mr. O'CONNELL. If this chart was arranged to deal with the period since September 1935, the first line of the chart, grade one, would indicate merely Morgan Stanley?

Dr. ALTMAN. That is right. It would represent Morgan Stanley management.

ELECTRIC LIGHT AND POWER, GAS, AND WATER COMPANIES

Dr. ALTMAN. I turn now to the second group, namely, Electric Light and Power, Gas, and Water Companies, and propose to discuss this group with the aid of a chart and table called "Quality of Bond Issues Managed by Investment Banking Firms January 1934-June 1939: Electric Light and Power, Gas, and Water Companies."

Mr. NEHEMKIS. Dr. Altman, is this the table to which you have referred?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And the source of the data?

Dr. ALTMAN. Is the same as previously set forth.

Mr. NEHEMKIS. The table and chart identified by the witness, Mr. Chairman, are offered in evidence.

(The chart referred to was marked "Exhibit No. 2069" and appears on p. 12699. The statistical data on which this chart is based are included in the appendix on p. 12997.)

Dr. ALTMAN. During the period January 1934 through June 1939, the registered issues of electric light and power, gas and water companies managed by thirty-eight leading firms totaled \$3,800,000,000, or 51 percent of all registered managed issues here dealt with.

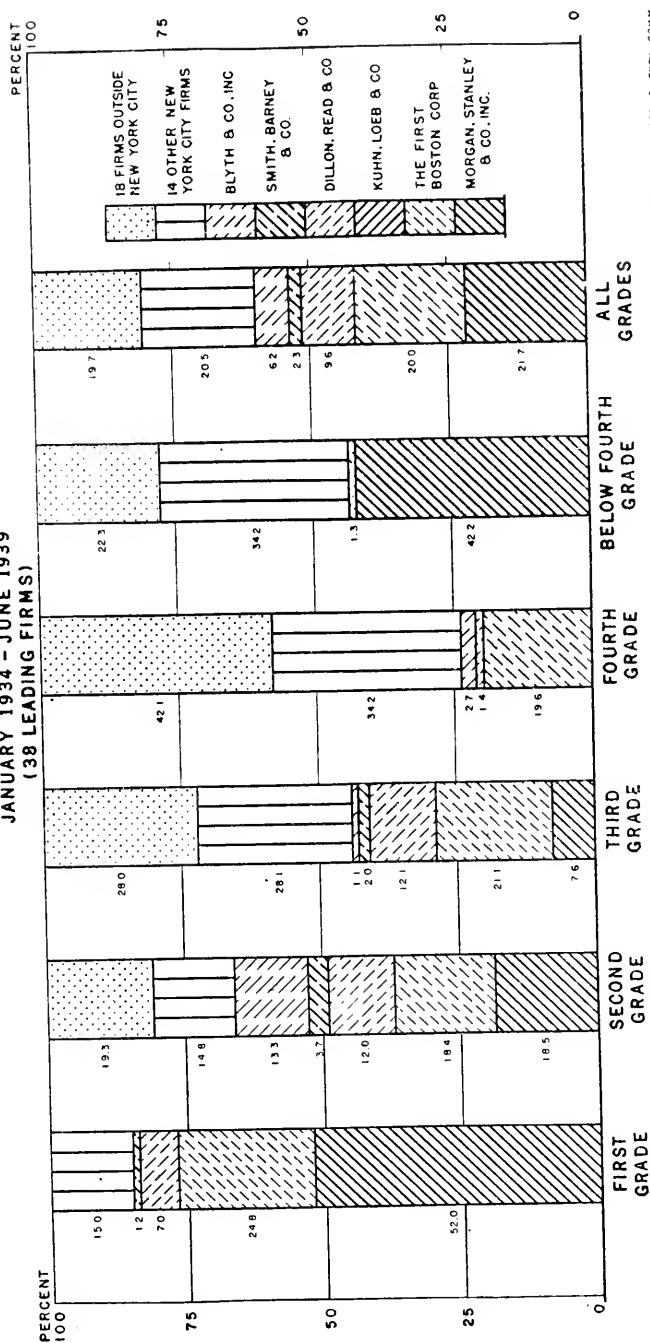
Morgan Stanley & Co., Inc., managed 22% of such issues and The First Boston Corporation, 20%. The eighteen firms outside of New York City managed 20% of the total. It is noteworthy that these eighteen firms managed a larger proportion of the issues in this field than in any other field. Illustrative of the specialization in security organization is Kuhn, Loeb & Co., which had no issues in this industry in five and a half years.

EXHIBIT No. 2069

QUALITY OF BOND ISSUES MANAGED BY INVESTMENT BANKING FIRMS

ELECTRIC LIGHT AND POWER, GAS AND WATER COMPANIES

JANUARY 1934 - JUNE 1939
(38 LEADING FIRMS)



OS-1171 PREPARED BY SEC. & ECON. COMM.

The distribution of managed issues by quality is somewhat different.

Turning to grade 1, we find that Morgan Stanley & Co., Inc., managed 52 percent of these issues, and The First Boston Corporation managed 25 percent of these issues, so that Morgan Stanley and First Boston together managed three-quarters of all the first-grade issues of electric light and power, gas and water companies.

Again, if we consider the period covering the business life of Morgan Stanley, certain changes appear. We find that for the period covering its business life, Morgan Stanley & Co., Inc. managed 25 percent of all issues¹ in this field, as compared with 21.7 percent for the longer periods covered by the chart, and if we turn to grade 1, we find that Morgan Stanley & Co., Inc. managed 70.5 percent for the period since its organization, as compared with 52 percent for the full period as shown on the chart.

TRANSPORTATION AND COMMUNICATION COMPANIES

Dr. ALTMAN. I propose now to turn to the next field, namely, that of registered managed bond issues of transportation and communication companies, and propose to discuss this with the aid of a chart and table called "Quality of Bond Issues Managed by Investment Banking Firms, January 1934-June 1939: Transportation and Communication Companies."

Mr. NEHEMKIS. Dr. Altman, is that the table to which you have referred?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And the source is the same as previously indicated?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. The table and chart are offered in evidence.

(The chart referred to was marked "Exhibit No. 2070" and appears on p. 12701. The statistical data on which this chart is based are included in the appendix on p. 12998.)

Dr. ALTMAN. It should be noted that the data do not include securities issued by common or contract carriers, the issuance of which is subject to section 20a of the Interstate Commerce Act. Such issues are exempt from registration under the Securities Act. This group consists for the most part, therefore, of bond issues of communication companies and principally, of telephone companies.

Morgan Stanley & Co., Inc. dominates this field. It managed \$560,000,000 or 71 percent of the financing in the period January 1934 through June 1939. It managed all the first-grade issues and 95 percent of the second-grade issues. The First Boston Corporation, Dillon Read & Co., and Smith, Barney & Co. managed no registered issues in this field; Kuhn, Loeb and Co. managed a transportation issue of \$19,250,000 for General American Transportation Corporation and Blyth & Co., Inc. managed scattered issues aggregating \$19,000,000.

ALL OTHER ISSUES

Dr. ALTMAN. I turn now to the last segment of this break-down, namely, "all other issues," and propose to discuss this with the aid of a

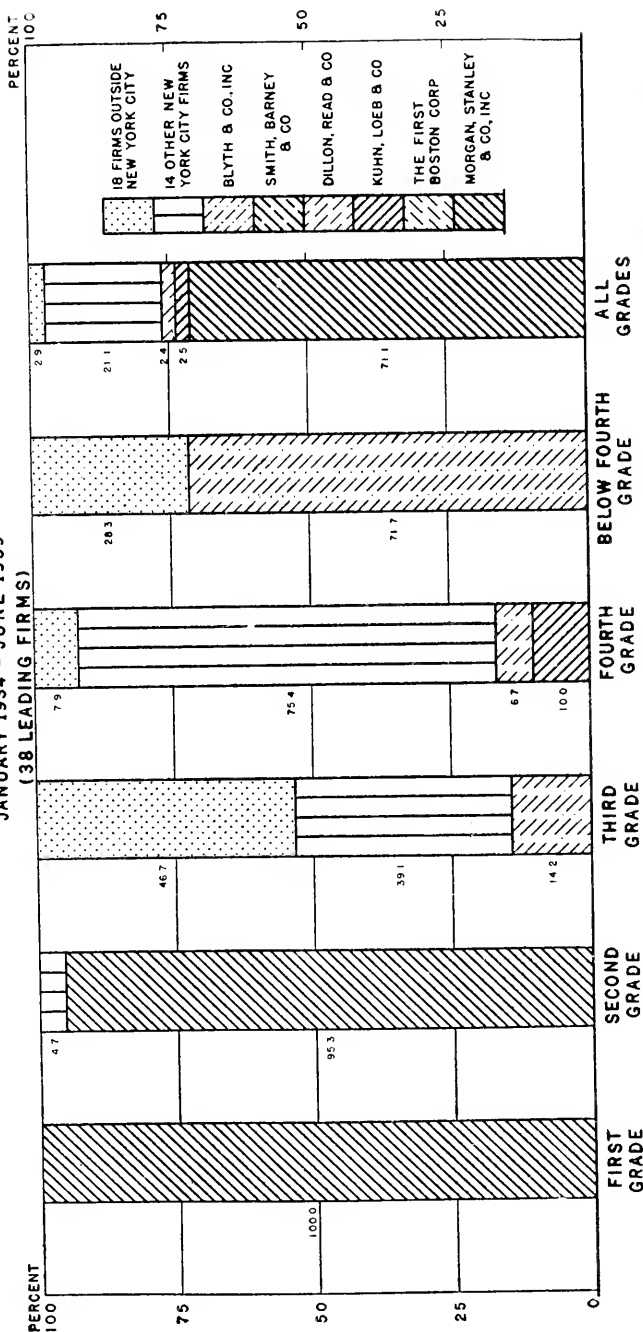
¹ See "Exhibit No. 2067," appendix, p. 12994.

² See supporting data for "Exhibit No. 2070," appendix, p. 12998.

EXHIBIT No. 2070

QUALITY OF BOND ISSUES MANAGED BY INVESTMENT BANKING FIRMS TRANSPORTATION AND COMMUNICATION COMPANIES

JANUARY 1934 - JUNE 1939



DS-1369 PREPARED BY SEC. & EXCH. COM.

chart and table called "The Quality of Bond Issues Managed by Investment Banking Firms, January 1934-June 1939: Companies Other Than Manufacturing or Public Utility."

Mr. NEHEMKIS. Is this the table to which you have referred?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. And the source of the data is the same as previously indicated?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. The table and chart are offered in evidence.

Acting Chairman WILLIAMS. They may be received.

(The chart referred to was marked "Exhibit No. 2071" and appears on p. 12703. The statistical data on which this chart is based are included in the appendix on p. 12999.)

Dr. ALTMAN. In this group are included all issues by foreign Governments within this period. I might mention the issues by the Dominion of Canada, Argentina, Norway, and so on, and such other issues as do not fall within the earlier classifications.

The importance of Morgan Stanley & Co., Inc. in this field may be seen from the fact that for the full period covered, Morgan Stanley & Co., Inc. managed 32.4% of all the issues, and 74.1% of all the first-grade issues. If we consider merely the shorter period, that is, the period since Morgan Stanley has been in operation, we find that the percentage of first-grade securities managed remains the same; that is to say, 74% of the total, but the percentage of all securities within this field increases from 42% for the long period to 51% for the short period.¹

SUMMARY OF CONCENTRATION BY QUALITY AND INDUSTRY

Dr. ALTMAN. The character of the business of managing registered bond issues may now be summarized for the 38 leading firms as follows (I deal here with the short period, September 16, 1935, to June 30, 1939): Morgan Stanley & Co., Inc., during this period managed \$2,000,000,000 of registered bond issues, of which 42.7 percent fell in the first grade and 79.2 percent fell in the first two grades.

Now let us compare this with the business of other underwriting houses. If we take the other five New York City firms, which have been specifically mentioned, as a group, that is to say, if we take the combined business of First Boston; Kuhn, Loeb; Dillon Read; Smith, Barney; and Blyth, we find that these firms, too, managed two billion of registered bond issues, but 4.4% fell in the first grade and 42% fell in the first two grades, as compared with the 42.7 percent of Morgan Stanley in the first grade and 79.2 percent of Morgan Stanley in the first and second grades.

These may be compared with the record of the 14 other New York City firms previously identified, which together managed \$1,300,000,000 of registered bond issues, of which 9.1% fell in the first grade and 23.6% fell in the first two grades.

The record of the 18 firms outside New York City previously identified is interesting in this connection. These firms managed

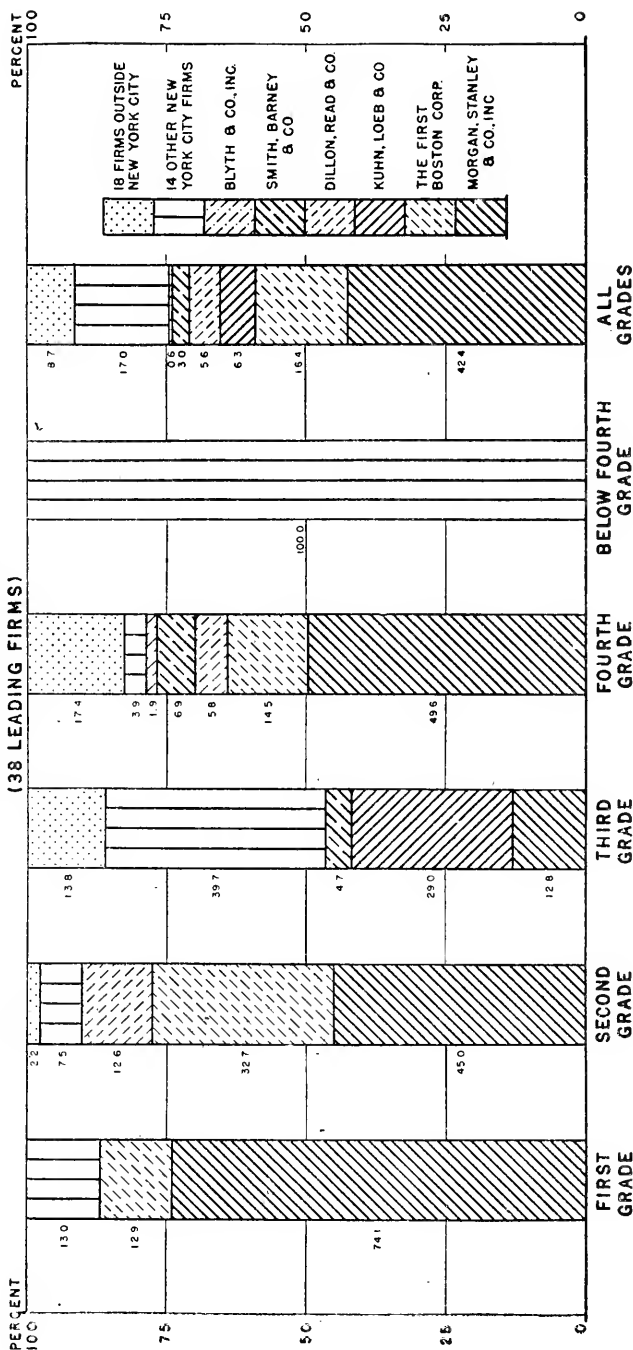
¹ See "Exhibit No. 2067," appendix, p. 12994.

EXHIBIT No. 2071

QUALITY OF BOND ISSUES MANAGED BY INVESTMENT BANKING FIRMS COMPANIES OTHER THAN MANUFACTURING AND PUBLIC UTILITY

JANUARY 1934 - JUNE 1939

(138 LEADING FIRMS)



DS-1372 PREPARED BY SEC. & EXCH. COMM.

\$936,000,000 of registered bond issues, none of which were in the first grade, and 30.8 percent of which fell in the second grade.

This material is summarized in a table called "Distribution by Grades of Registered Bond Issues Managed by Morgan Stanley & Co., Inc. and 37 other Leading Investment Banking Firms, September 16, 1935, to June 30, 1939."

Mr. NEHEMKIS. Is this the table you refer to, Dr. Altman?

Dr. ALTMAN. It is.

Mr. NEHEMKIS. The source of the data is the same as you have previously indicated?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. Mr. Chairman, this table is offered in evidence.

(The table referred to was marked "Exhibit No. 2072" and is included in the appendix on p. 13000.)

Dr. ALTMAN. The charts and the tables just presented have dealt with the distribution of and the concentration in the management of registered bond issues. Now we may direct our attention to the distribution of underwriting participations.

INTERPARTICIPATIONS IN ORIGINATIONS OF EIGHT FIRMS

Dr. ALTMAN. The Investment Banking Section of the Securities and Exchange Commission requested from eight leading investment banking firms a complete list of all issues managed and of all participations. These data, which are preliminary and subject to correction as additional data are received, have been compiled and analyzed by our staff.

The following table, containing eight parts, has been prepared from these data. These tables may look complicated. Unfortunately, the subject is complicated, and the tables are of equal complexity, but they attempt to answer two questions:

First, how much of the participations of each firm came from its own originations? And how much from issues originated by the other seven firms?

Secondly, how much of its originations did each firm give to the other seven firms, and how much did it keep for itself?

I trust that this will become clearer as the discussion of the tables proceeds.

Mr. NEHEMKIS. Are those the eight sections that you made reference to a moment ago?

Dr. ALTMAN. They are.

Mr. NEHEMKIS. This data was furnished to the Investment Banking Section by the eight investment banking firms you have made reference to?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. These tables are offered.

Acting Chairman WILLIAMS. They may be admitted.

(The tables referred to were marked "Exhibit No. 2073" and are included in the appendix on p. 13001.)

Dr. ALTMAN. I propose to discuss these tables in very summary fashion; otherwise we might be here for a much longer time, I am afraid, than any of us are prepared to sit. First, let us consider Part I, which deals with Morgan Stanley & Co., Inc. Morgan Stanley & Co. had participations during the period covered by the table,

that is to say, from June 14, 1934, to June 30, 1939, amounting to \$590,000,000. This table attempts to explain where these participations came from.

By reference to the first two columns of the table, one sees that 88.7% of all Morgan Stanley & Co. participations came from issues managed by Morgan Stanley & Co., Inc. and that 99.3% of all participations of Morgan Stanley & Co., Inc. during this period came from issues managed either by itself or by the other seven firms set forth.

It is interesting to note that during this period none of the participations of Morgan Stanley & Co. came from issues managed by The First Boston Corporation.

Now we turn to the second question. How much did these firms mentioned participate in Morgan Stanley issues? By reference to columns 3 and 4 of the table we see that during the period in question Morgan Stanley & Co., Incorporated managed issues amounting to \$2,414,000,000. Of the total amount of issues so managed, 21.7% was reserved by Morgan Stanley & Co. for itself as an underwriting participation, and the various other amounts and percentages set forth in columns 3 and 4 of the table indicate the participations in such issues of all the other firms.

Notice that the eight firms, including Morgan Stanley & Co., reserved—or there was reserved for these eight firms in this \$2,414,000,000 of security issues—58.4% of the total, so that the remaining 41.6 percent of these issues managed by Morgan Stanley & Co. was available to all the other underwriters in the United States.

Mr. NEHEMKIS. Dr. Altman, you had intended to say, did you not, that Morgan Stanley and the other seven firms took 58.4% of all Morgan Stanley originations?

Dr. ALTMAN. That is correct.

Mr. NEHEMKIS. Will you proceed, sir?

Dr. ALTMAN. Part II deals with Kuhn, Loeb & Co. During the period from June 14, 1934, to June 30, 1939, Kuhn, Loeb & Co. had underwriting participations of \$708,000,000, as set forth in column 1 of this table.

Of this total, \$420,000,000, or 59.2%, came from issues managed by Kuhn, Loeb & Co. and \$156,000,000, or 22%, came from issues managed by Morgan Stanley & Co., Inc. The participations by Kuhn, Loeb & Co. in issues managed by the other six investment banking firms mentioned, added to their participation in their own and Morgan Stanley issues, account for 94% of all their underwriting participations. Thus, the participations in originations by all investment banking firms, excluding these eight firms, account for only 6% of all Kuhn, Loeb & Co. underwriting participations.

Now we turn to columns 3 and 4 of the table. During the period in question, Kuhn, Loeb & Co. managed \$1,053,603,000 of security issues. Of this total it reserved for itself underwriting participations of \$419,000,000, or 39.8% of the total. There was reserved for the other seven firms 26.1% of all Kuhn, Loeb originations. Thus the eight firms mentioned, including Kuhn, Loeb & Co. itself, took 65.9% of all Kuhn, Loeb & Co. originations, leaving the balance of 34.1% to be divided among all the other underwriters in the United States.

Part III deals with The First Boston Corporation. During the

period in question, The First Boston Corporation had underwriting participations of \$709,000,000, of which 34.0% came from issues managed by itself, and 79.1% came from issues managed by itself and the other seven houses mentioned.

On the other hand, The First Boston Corporation managed issues totalling \$993,000,000, and 42.1% of this amount was reserved in the form of underwriting participations to these eight firms, including itself. Notice that Morgan Stanley & Co., Inc. had no participations in First Boston issues.

As a result, 58% of all originations of The First Boston Corporation during this period were available for underwriting participations to all the other remaining investment banking firms.

I think we may pass rather hurriedly over the next parts of the table. They will constitute part of the statistical record.

Suppose we summarize this material dealing with the eight firms mentioned. During the period from June 14, 1934, to June 30, 1939, these eight firms managed issues totaling \$6,700,000,000. Of this amount they reserved for themselves, on the average, underwriting participations of 56%. That is to say, of the issues managed by these eight firms, more than half was reserved to themselves in the form of underwriting participations and the remainder was available to all other investment banking firms in the form of underwriting participations.

During the same period the underwriting participations of these same firms amounted to \$4,300,000,000, of which 86% represented reservations in their own originations.

DISTRIBUTION OF SALES BY THE DISTRIBUTING GROUP

DR. ALTMAN. I turn now to a slightly different subject. There has been much discussion within the past few years of the institutional character of the securities market. This discussion has centered about the predominant role played by banks and insurance companies in the purchase of newly offered securities.

The Investment Banking Section of the Securities and Exchange Commission investigated the distribution of the sales of four bond issues by the respective distributing groups. These issues were offered in 1938 and represented a variety of maturities and industries. In addition to these data, we are fortunate to have the results of a questionnaire on the same subject by Morgan Stanley & Co., Inc. Morgan Stanley & Co. selected three bond issues which they had managed, one in 1936, one in 1937, and the third in 1938, and sent questionnaires to all the members of the distributing group who had participated in the syndication of all three issues.

The Securities and Exchange Commission questionnaire covered four bond issues; the Morgan Stanley questionnaire covered three bond issues; one bond issue was covered by both questionnaires.

The results from both questionnaires are similar and are shown on a table and chart entitled "The Distribution of Sales to Various Classes of Purchasers by the Distributing Group, Six Bond Issues, 1936-1938."

MR. NEHEMKIS. Is that the table you refer to, Dr. Altman?

DR. ALTMAN. It is.

MR. NEHEMKIS. The chart and table identified by the witness are offered in evidence, Mr. Chairman.

Acting Chairman WILLIAMS. They may be received.

(The chart referred to was marked "Exhibit No. 2074" and appears on p. 12708. The statistical data on which this chart is based are included in the appendix on p. 13005.)

Dr. ALTMAN. On this chart are set forth the percentages of the sales by the distributing group made to various classes of purchasers. The bottom segment in each case represents the percent of the total issue sold to banks; the second segment, that sold to insurance companies; the third segment, that sold to charitable and educational foundations; the fourth segment, that sold to security dealers and the top segment, that proportion of the total issue sold to individuals.

Banks on the average that is, taking these issues as a group, account for 47%¹ of the sales by the distributing group, and life and fire insurance companies on the average bought 38%¹ of the issues offered. If to these two are added the sales made to charitable and educational foundations, we find that on the average 88.4%¹ of all sales made by the distributing group in these issues went to so-called institutional purchasers.

It should be noted, and it will be apparent from the table, that some bond issues are more attractive to banks than to insurance companies, while others are more attractive to insurance companies than to banks. It is noteworthy, however, that the percentage of the total issues taken by banks and insurance companies together was relatively constant for the six issues. On the average, banks and insurance companies together bought 85% of the total amount of these six issues.

Individuals, on the average, bought 6.6%¹ of the bonds sold by the distributing group. The sales indicated here to security dealers represent, of course, merely stopping places for these securities, but we haven't followed up the small percentages reflecting the sales to security dealers, so I have no way of knowing how these aggregate percentages would be changed if such secondary distributions were considered. However, there would probably not be very much change in these percentages if one took account of the secondary distribution by security dealers who were not members of the distributing group.

Both the questionnaires to which I have referred requested the distribution of sales by the distributing group, not only by classes of purchasers, but by states.

The results of these questionnaires have been tabulated and form the basis for a table and chart called "Distribution by States of the Sales Made by the Distributing Group of Six Bond Issues, 1936-1938."

Mr. NEHEMKIS. Is that the table you referred to a moment ago, Dr. Altman?

Dr. ALTMAN. It is.

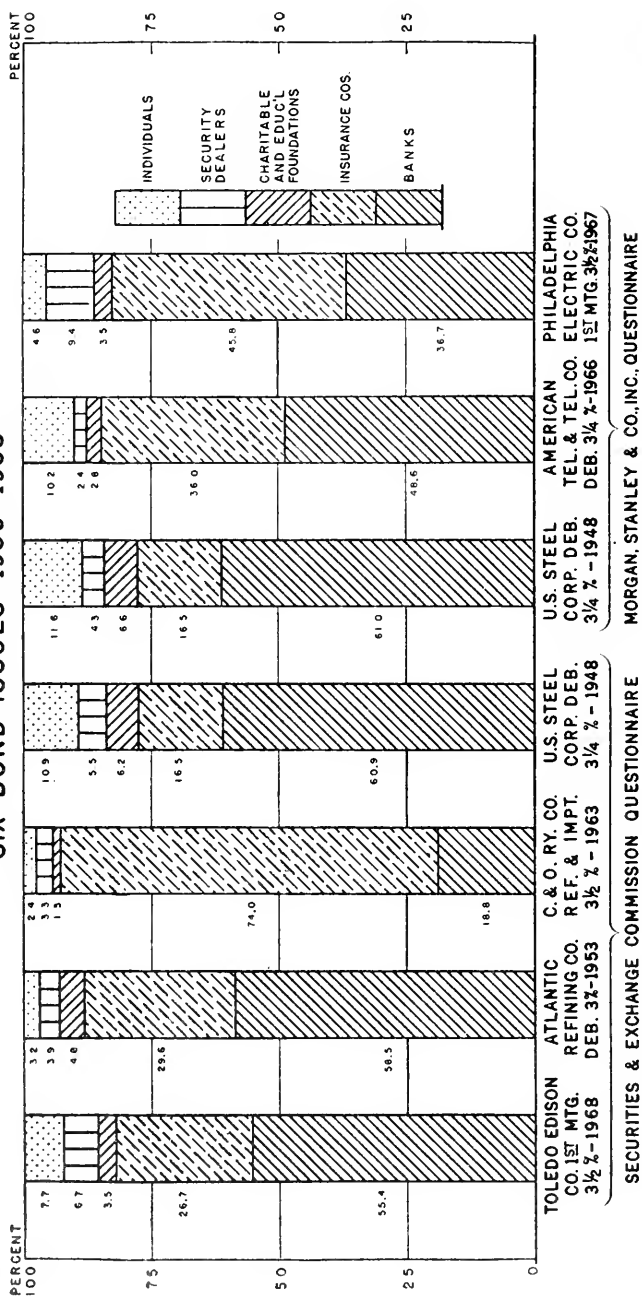
Mr. NEHEMKIS. May I offer in evidence, Mr. Chairman, the table and chart identified by the witness?

(The chart referred to was marked "Exhibit No. 2075" and appears on p. 12709. The statistical data on which this chart is based are included in the appendix on p. 13006.)

¹ Corrected figure.

EXHIBIT No. 2074

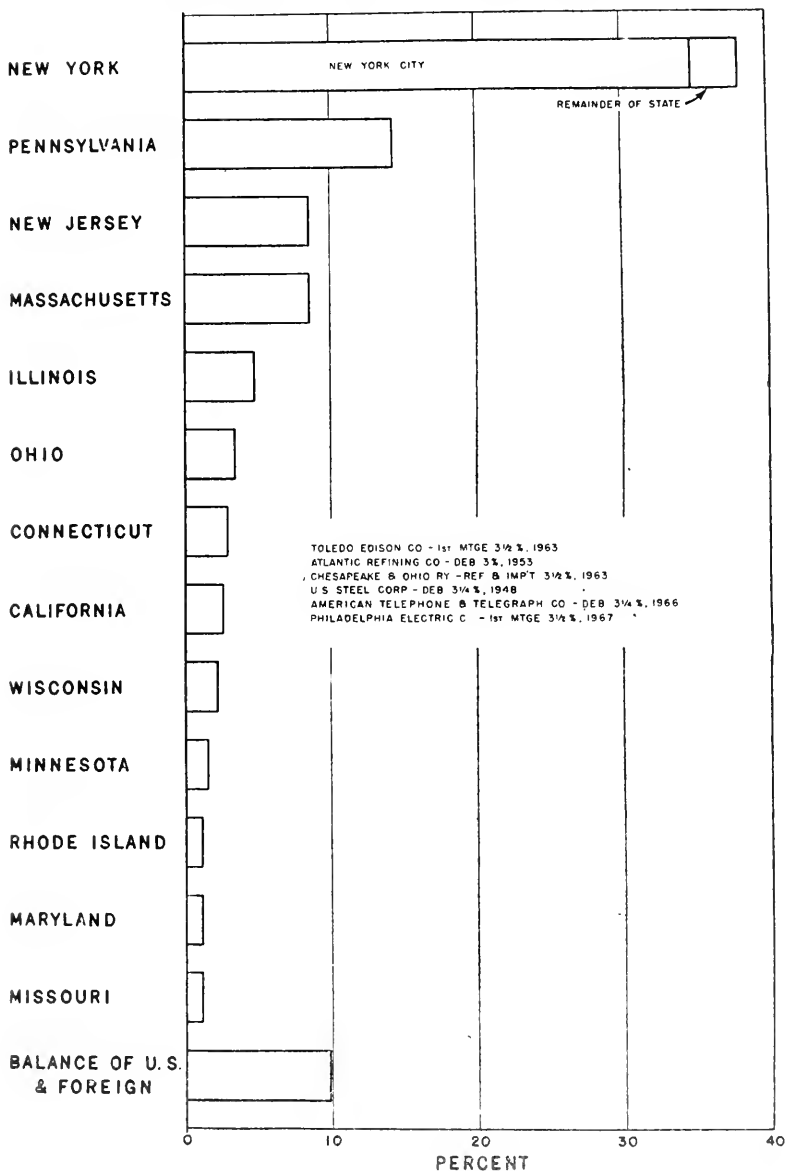
DISTRIBUTION OF SALES TO VARIOUS CLASSES OF PURCHASERS BY THE DISTRIBUTING GROUP SIX BOND ISSUES 1936-1938



OS-1782 PREPARED BY SEC. 8 EXCH. COMM.

EXHIBIT No. 2075

DISTRIBUTION OF SALES BY STATES BY THE DISTRIBUTING GROUP SIX BOND ISSUES 1936-1938



Dr. ALTMAN. The data on this table may be very simply summarized. 38%¹ of all the issues mentioned was sold in New York State, 35%¹ in New York City alone. Another 30%¹ was sold in the three states of Pennsylvania, Massachusetts, and New Jersey. Thirteen states accounted for 90%¹ of the purchases from the distributing group.¹

SUMMARY

Dr. ALTMAN. The general line of testimony upon which I have been engaged this afternoon may be summarized in the following way:

First, from the period September 16, 1935, that is to say the day it began business operations, until June 30, 1939, Morgan Stanley & Co., Inc. managed 32% of all the registered bond issues managed by thirty-eight leading firms. It managed all of the first-grade registered bond issues of manufacturing companies; 71% of all the first-grade registered bond issues of electric light and power, gas, and water companies; all of the first-grade registered bond issues of transportation and communication companies, principally telephone issues; and 74% of all the first-grade registered bond issues of all other issuers. During this period, Morgan Stanley & Co., Inc. managed four-fifths of all the first-grade registered bond issues managed by thirty-eight leading firms in the United States.

Second, none of the investment banking firms located outside of New York City managed any of the first grade registered bond issues referred to during the period from January, 1934, through June, 1939. The lower the grade of the security, the larger the relative originating importance of the firms outside of New York City.

Third, during the period from September 16, 1935, through June 30, 1939, Morgan Stanley & Co., Inc., managed \$2,000,000,000 of registered bond issues, of which 43% fell within the first grade and 79% within the first two grades. During the same period, The First Boston Corporation, Kuhn, Loeb & Co., Dillon Read & Co., Smith, Barney & Co., and Blyth & Co., Inc. also managed \$2,000,000,000 of registered bond issues, of which 4% fell within the first grade and 42% within the first two grades. Fourteen other New York City firms managed \$1,300,000,000 of registered bond issues during this period, of which 9% fell in the first grade and 24% in the first two grades. Finally, during the same period, eighteen leading firms outside of New York City managed \$900,000,000 of the registered bond issues, of which none fell within the first grade, and 31% within the second grade.

Fourth, eight leading firms in the United States, Morgan Stanley & Co., Inc., Kuhn, Loeb & Co., The First Boston Corporation, Blyth & Co., Inc., Dillon Read & Co., Mellon Securities Corporation, Harriman Ripley & Co., Inc., and Smith, Barney & Co., managed \$7,400,000,000 of securities from June 14, 1934, to June 30, 1939. On the average, these eight firms reserved more than one-half of the total of the issues managed by them as their underwriting participations; the remainder was divided among all the other investment bankers in the United States.

Fifth, these eight firms had underwriting participations of \$4,300,000,000. On the average, 86% of this total represented participations

¹ Corrected figure.

in issues managed by these firms and the remaining 14% represented participations in issues managed by all other investment bankers.

Mr. NEHEMKIS. Mr. Chairman, may it please the committee, this concludes the presentation of the testimony on investment banking which the Investment Banking Section of the Securities and Exchange Commission was authorized to conduct by the reference of this committee. May I say in behalf of myself and the members of the staff that we are extremely grateful to you for the patience which you have shown us during these several weeks in the presentation of this evidence.

Acting Chairman WILLIAMS. I want to compliment you, Mr. Nehemkis, and your staff, on the splendid way in which you have prepared and presented this matter to the committee. We appreciate it, and we have been very highly benefited by it.

If there are no further questions now, this hearing will be closed as far as the investment banking subject is concerned, and the committee will stand in recess until 10:30 Monday, at which time I understand we will take up the question of cartels.

(Whereupon at 5:15 p. m., the committee adjourned until 10:30 a. m. Monday, January 15, 1940.)

APPENDIX

EXHIBIT No. 1773

[From the files of Lehman Brothers]

Cable address "Coldness"

GOLDMAN, SACHS & Co.

60 Wall Street

CD/AMO/6

NEW YORK, April 21, 1920.

THE B. F. GOODRICH COMPANY FIVE-YEAR 7% CONVERTIBLE GOLD NOTES SELLING
SYNDICATE

MESSRS. LEHMAN BROTHERS,
16 William St., New York City.

GENTLEMEN:—Our joint participation in the above named syndicate, after ceding an interest of \$50,000 therein to the Central Union Club, amounted to \$1,953,333.33, face value of Notes, the profit on which amounted to \$29,020.31, your one-half ($\frac{1}{2}$) share thereof being \$14,510.16. You have received direct from the Bankers Trust Co. check for \$3,714.10 and we, therefore, take pleasure in handing you our check for \$10,796.06, to cover the balance of profit due you, receipt of which we would thank you to acknowledge.

We remain

Yours very truly,

GOLDMAN SACHS & Co.

(Encl.)

(Hand written:)

2003

50

1953

EXHIBIT No. 1774

[From the files of Goldman, Sachs & Co.]

[Copy]

BANKERS TRUST COMPANY,
16 Wall Street, New York, April 15, 1920.

\$30,000,000 B. F. GOODRICH FIVE YEAR 7% CONVERTIBLE GOLD NOTES UNDER-
WRITING JOINT ACCOUNT

MESSRS. GOLDMAN, SACHS & COMPANY,
60 Wall Street, New York City.

DEAR SIR: Referring to your one-third interest in the above mentioned account, we take pleasure in handing you herewith cheque to your order for \$50,000, representing your proportionate share of the $\frac{1}{2}\%$ underwriting commission on the issue of \$30,000,000. B. F. Goodrich 5 Year 7% Convertible Gold Notes due April 1, 1925.

Please acknowledge receipt in full and final settlement of your interest in this business, and oblige,

Yours very truly,

(Signed) B. A. TOMPKINS,
Vice President.

CONCENTRATION OF ECONOMIC POWER

EXHIBIT No. 1775

[From the files of Lehman Brothers]

Cable Address "Coldness"

GOLDMAN, SACHS & Co.

60 Wall Street

NEW YORK, April 17, 1920.

(Handwritten:) File. Syndicate.

\$30,000,000

THE B. F. GOODRICH COMPANY

FIVE-YEAR 7% CONVERTIBLE GOLD NOTES—JOINT ACCOUNT

Messrs. LEHMAN BROS.,

16 William Street, New York City.

GENTLEMEN: We enclose herewith copy of letter received from the Bankers Trust Company with reference to the above-mentioned account.

We also enclose herewith our check for \$25,000, covering your one half share of the amount received from the Bankers Trust Company as stated in their letter.

Please acknowledge receipt.

Yours very truly,

GOLDMAN, SACHS & Co.

(Handwritten:) Ans. SJS.

EXHIBIT No. 1776

[From the files of Lehman Brothers]

Cable Address "Coldness"

GOLDMAN, SACHS & Co.

60 Wall Street

(11-mah-6)

Messrs. LEHMAN BROS.,

16 William Street, New York City.

NEW YORK, February 9, 1920.

GENTLEMEN: We, together with the Bankers Trust Co. and the Guaranty Trust Co. have signed a contract with The B. F. Goodrich Co., upon the terms stated in an agreement dated February 6, 1920, copy of which we have previously sent you, underwriting an issue of \$30,000,000 The B. F. Goodrich Company Five-year 7% Convertible Gold Notes to be offered to its stockholders.

Our interest in the total obligation amounts to \$10,000,000 face value of notes, and in accordance with our arrangement, you have a one-half interest in this obligation of ours, on the original terms.

Kindly confirm your understanding of the above.

Yours very truly,

GOLDMAN, SACHS & Co.

EXHIBIT No. 1777

[From the files of Lehman Brothers. Letter from Lehman Brothers to Goldman, Sachs & Company]

Confidential.

SEPTEMBER 9, 1922.

\$13,500,000 DETROIT CITY GAS COMPANY

FIRST MORTGAGE 25 YEAR 6% GOLD BONDS, SERIES "A", DUE-JULY 1, 1947

PURCHASING GROUP

Messrs. GOLDMAN, SACHS & COMPANY,

New York City.

GENTLEMEN: Enclosed herewith we beg to hand you copy of a letter received today from Messrs. Halsey, Stuart & Company, in accordance with which we

enclose herewith our check to your order for \$45,000, representing your one-half share of the payment made to us on account of our joint one-third interest in this business.

Kindly acknowledge receipt in full and final settlement of your interest.

Very truly yours,

SJS *B

Encs:—

EXHIBIT No. 1778

[From the files of Lehman Brothers. Letter from Lehman Brothers to Halsey Stuart & Co., Inc.]
Confidential.

SEPTEMBER 9TH, 1922.

\$13,500,000 DETROIT CITY GAS COMPANY

FIRST MORTGAGE 25 YEAR 6% GOLD BONDS, SERIES "A", DUE JULY 1, 1947

PURCHASING GROUP

MESSRS. HALSEY STUART & COMPANY, INC.,
209 South LaSalle Street, Chicago, Illinois.

GENTLEMEN: We acknowledge receipt of your letter of the 7th instant enclosing check to our order for \$90,000, representing the share of profit derived from the above account due jointly to Messrs. Goldman, Sachs & Company and ourselves for a one-third interest, which payment is accepted in full and final settlement of our joint interest in this business.

Very truly yours,

SJS *B

EXHIBIT No. 1779

[From the files of Lehman Brothers]

Chicago
New York
Philadelphia
Boston

Detroit
Minneapolis
St. Louis
Milwaukee

HALSEY, STUART & Co., INCORPORATED
209 South LaSalle Street

CHICAGO, September 7, 1922.

\$13,500,000 DETROIT CITY GAS COMPANY FIRST MORTGAGE TWENTY-FIVE YEAR
6% GOLD BONDS, SERIES "A" DUE, JULY 1, 1947

PURCHASING GROUP

Confidential

LEHMAN BROS.,

16 Williams St., New York City.

GENTLEMEN: Referring to your participation in the above named group, we are pleased to enclose herewith our check to your order for \$90,000 representing your share of the profit derived from this account.

Kindly acknowledge receipt in full and final settlement of your interest in this business.

Yours very truly,

HALSEY, STUART & Co.

LJF MH

EXHIBIT No. 1780

[From the files of Lehman Brothers]

LEHMAN BROTHERS,

16-22 William Street, New York, September 2nd 1926.

MESSRS. GOLDMAN, SACHS & Co.,

27 Pine Street, New York, N. Y.

DEAR SIRS: We attach hereto copy of agreement dated September 2, 1926, between R. H. Macy & Co., Inc. and ourselves, providing for the sale of \$7,500,000, principal amount of 5¼% Serial Gold Debenture Bonds.

We understand that you have a 50% interest with us in this contract as though you and we were joint equal parties as Bankers, we, however, to have full and sole control of all matters relative to the sale and distribution of the Debenture Bonds, the organization of the selling group, the form of prospectus and advertisement, and all other matters arising under the contract, and the public offering to be made under our name.

If the foregoing is in accord with your own understanding, kindly so indicate by endorsement at the foot hereof.

Very truly yours,

LEHMAN BROS.

We confirm the foregoing and accept the 50% participation above provided, on the terms specified.

GOLDMAN & Co.

GOLDMAN, SACHS & Co.

By _____

EXHIBIT No. 1781

[From the files of Lehman Brothers]

(Handwritten) R. H. Macy & Co. stock offering 1922.

Members of the Purchase Group who have accepted

		<i>Participation in Selling Syndicate Shares</i>
Goldman, Sachs & Co., Lehman Bros. Joint a/c-----	\$1,000,000	10,000
NEW YORK CITY:		
American Exchange Securities Co-----	100,000	500
Bernhard, Scholle & Co-----	400,000	2,500
Barney & Co. (C. D.)-----	150,000	1,000
Gimbel Brothers, Bankers-----	500,000	5,000
Goldschmidt & Co. (H. P.)-----	50,000	250
Hallgarten & Co-----	500,000	2,500
Hayden, Stone & Co-----	100,000	500
Hutton & Co. (E. F.)-----	100,000	500
Halle & Stieglitz-----	150,000	500
Kidder, Peabody & Co-----	250,000	1,000
Ladenburg, Thalmann & Co-----	100,000	500
Lazard Freres-----	200,000	1,000
Lipper & Co. (Arthur)-----	500,000	5,000
Merrill, Lynch & Co-----	50,000	750
McDonnell & Co-----	50,000	400
Newburger, Henderson & Loeb-----	500,000	8,000
Nannburg & Co. (E.)-----	50,000	250
Newborg & Co-----	100,000	500
Redmond & Co-----	100,000	500
Salomon Bros. & Hutzler-----	100,000	500
Seligman & Co. (J. & W.)-----	200,000	500

EXHIBIT No. 1782

[From the files of Lehman Brothers]

OCTOBER 26, 1925.

MEMORANDUM

Following the talk Arthur Lehman had with Mr. Catchings on Friday, October 23rd, a further conference was held at the home of Arthur Sachs on Sunday, October 25th, at 9 o'clock. There were present at this conference: Messrs. Waddill Catchings, Arthur Sachs, Arthur Lehman, Herbert H. Lehman.

The conference throughout was marked by a temperate and amicable spirit. At its beginning I explained to our associates that I had not been present at any of the previous conferences and that I was desirous of knowing exactly what was in their minds. Mr. Catchings and Mr. Sachs thereupon set forth their understanding as to the future relations of the two houses with regard to old business. They reiterated strongly that it was their understanding and desire, as previously set forth, that our joint relation to all Companies previously financed by the two houses was to remain exactly as it had been in the past, save that a different arrangement be entered into now with regard to the National Dairy Products Co. and later possibly with regard to Lehn & Fink. With the exception of these two Companies, the interest of the two houses on any business relating to all of our old companies was to continue on an absolutely equal basis. With regard to the National Dairy Products Co. they took the following position:

Mr. Catchings has been for many months, and is now spending a large portion of his time on the affairs of this Company. Mr. Clarence Dauphinot is doing the same. They felt that a very large part of the recent development of the Company was due to their efforts, and that this situation would continue in the future. They felt, therefore, that so far as this Company was concerned they were entitled to larger compensation in connection with any transactions that might be effected.

They felt also that the same situation might develop in Lehn & Fink, and although this had not thus far been the case, they felt that if the situation did develop in Lehn & Fink as it had in the National Dairy Products, their preferential position in that Company should also be recognized by us. They were willing, however, to leave the relations in respect of Lehn & Fink open to further discussion and until it could be ascertained whether or not their relations to this Company were of outstanding importance as compared to our own.

Mr. Catchings stated that he had discussed the National Dairy Products situation with Mr. Philip Lehman before the latter sailed for Europe, and that he had definitely stated the attitude and feelings of Goldman, Sachs & Co. in respect of this company. He advised us that in this talk he had told Mr. Philip Lehman that he thought a reasonable share of the profits in connection with the acquisition by the National Dairy Products Co. of the Philadelphia Company would be 20%, and that as Mr. Philip Lehman demurred he had agreed to give us 25% of any compensation that might be received or profits made. Both Mr. Catchings and Mr. Sachs stated that they thought in future a reasonable compensation to us on any business for or in connection with the National Dairy Products Co. would be a minimum of 15%, but that this percentage might be increased for various reasons. We pointed out that while there might be justification for their position in respect to transactions affecting neither public financing nor a financial commitment, we felt that in the Sheffield Farms matter the situation was very different because this particular transaction involved both public financing and a financial commitment. A discussion followed on this subject and Arthur and I finally asked that they set forth a definite proposal to us. Their proposal was that they would give us on any business for or in connection with the National Dairy Products Co. a minimum of 15%, but that on the specific business now under discussion they would give us a participation of 20%. Mr. Catchings and Mr. Sachs thereupon retired and Arthur and I discussed the matter. We agreed to say that we felt that we were entitled to at least 25% on this business and that if our position was not recognized we would prefer to accept their original proposal of 15% rather than the 20% which we felt was offered as a compromise and simply to satisfy us. Mr. Catchings and Mr. Sachs after consultation suggested the following: They stated that they had not sufficiently taken into account the fact that in connection with the Sheffield Farms business there was public financing and that they realized that this changed the situation.

They proposed, therefore, that with regard to that portion of the transaction which involved public financing our share be equal to theirs as it involved relations to the public in which they did not desire to have any preferential position as compared to our own; that so far as that portion of the transaction which involved a purchase of shares of the Company and which did not entail public financing, we accept a 20% participation; that on all future transactions for or in connection with the National Dairy Products Co. our interest be a minimum of 15%, but that this percentage might be larger as future conditions developed. This suggestion was accepted by us and both Arthur and I stated that in making our first suggestion it had not been our disposition to trade, and that in order to show our good faith and the fact that we were not concerned with a monetary consideration, we would be willing, now that our position with regard to public financing had been recognized by them, to have them reduce our interest in the public financing if in their opinion it was necessary to include other partners in the business. This they stated would not be necessary as they had already included another house with an interest of 10%, so that there was 90% in interest to be divided among the three original partners of the business.

We thereupon proceeded to discuss the Lehn & Fink business, and it was agreed to leave this matter in abeyance until the situation developed further. It will be proper to take this matter up again for definite disposition as soon as the relative position of the two houses in connection with this business is more clearly defined, and that the decision in connection with this business would be based on the relative activity and usefulness of our two houses to Lehn & Fink. With regard to all other businesses we agreed, as outlined above, to leave the matter exactly as it had been for so many years in the past. On all business for or in connection with the Companies which we have already financed, save those two enumerated above, the interest of our two houses will be identical. If conditions should be changed in respect to any of these Companies, the matter would be one of careful discussion between our two houses. It was agreed, however, that no change would be made to take effect except after a reasonable period from the time of the discussion, or which could be to the advantage of either house in connection with any undertaking consummated or under contemplation. This understanding was accepted by all.

After the points described above were disposed of, there was a very frank discussion participated in by all with regard to the future relations of the two houses, and suggestions were made which it is hoped will result in a better understanding of some of the matters which have troubled us. The meeting adjourned at about 1 o'clock.

EXHIBIT No. 1783

[From the files of Lehman Brothers]

JANUARY 5, 1926.

MEMORANDUM OF RECENT CONVERSATIONS BETWEEN GOLDMAN, SACHS & CO. AND LEHMAN BROTHERS REGARDING THE FUTURE RELATIONSHIP BETWEEN THE TWO FIRMS.

1. With respect to the corporations specified on the attached list it will be the desire of the two firms to do any financing which may arise in the future upon the basis of the same relative interest in such financing which the firms had in the original business with respect to such company. Such business shall be handled either in the office of Goldman, Sachs & Co. or in the office of Lehman Brothers as indicated on the attached list.

2. Each firm shall endeavor to maintain the present relationship of the other firm or of any of its members with the respective listed companies.

3. If any of the listed companies refuses in the future to have either firm participate in a piece of financing, the other firm will endeavor to have such excluded firm afforded a full opportunity of presenting its case; but if the corporation in question still maintains its refusal the other firm shall be free to do the business itself either alone or with other houses, offering to the other firm its participation in the profits and losses provided the company in question does not object to such offering.

4. The relationship of the two houses with respect to financing business for The National Dairy Products Corporation and for Lehn & Fink Products Company shall be as set forth in the memorandum prepared by Mr. Herbert Lehman dated October 26, 1925.

5. If the future financing results from, or pertains to a corporation result up from, a consolidation of one or more of the corporations included in the accompanying list, and such corporation or corporations or its or their stockholders receive (including a proportionate share of what the Bankers acquire) less than one-half of the total securities, including cash, issued in connection with the consolidation, then the firm originating the consolidation shall endeavor to give the other firm an interest in the financing substantially equivalent to the proportion which such other firm's interest in the original financing of the listed corporation in question bears to the total new securities issued on the consolidation.

6. With regard to any financing not pertaining to any of the listed corporations either firm is at liberty at any time to make proposals to the other firm, but neither firm is under any commitment to the other excepting to the extent voluntarily made in each case. In thus relieving each firm of such commitments, banks or security houses committed through either firm are similarly relieved.

7. Any trading account formed by either firm in association with any of the listed corporations or any official thereof shall be managed by the firm specified on the accompanying list with respect to such corporations, but each firm shall be free to determine its relative participation in such trading account, having the option to participate in the primary profit and losses thereof up to its proportion in the original business of the two firms with respect to such corporation. Except as herein provided each firm shall be free to form and manage trading accounts in any securities of the listed corporations.

8. Wherever joint financing business is done for any of the listed corporations the names of the two firms shall be used.

9. The arrangements herein outlined are conditioned upon the observance by each firm of its obligations hereunder and upon a continuation by each of the sense of obligation arising out of the relationship of the two firms in the past.

GOLDMAN, SACHS & Co.

LEHMAN BROS.

GOLDMAN, SACHS & CO.

American Metal Co.
American Wholesale Corp.
Archer-Daniels-Midland Co.
Brown Shoe Co.
Brunswick-Balke-Collender Co.
Campbell Soup Co.
Cluett, Peabody & Co.
Continental Can Co.
Endicott-Johnson Corp.
General Cigar Co.
Gimbel Bros.
Jewel Tea Co.
Kelly-Springfield Tire Co.
Kelsey Wheel Co.
S. H. Kress & Co.
Fried. Krupp, Ltd.
B. Kuppenheimer & Co.
Lehn & Fink Products Co.
Long-Bell Lumber Co.
Manhattan Shirt Co.
May Department Stores Co.

Merck & Co.
Munsingwear, Inc.
National Cloak & Suit Co.
National Dairy Products Corp.
Paris-Lyons-Mediterranean Co.
Pet Milk Company
Phillips-Jones Corporation
Pillsbury Flour Mills, Inc.
Postum Cereal Co.
Robert Reis & Co.
Sears, Roebuck & Co.
Franklin Simon & Co.
Standard Milling Co.
Studebaker Corp.
Van Raalte Co.
F. W. Woolworth Co.
Sloss Sheffield Steel & Iron Co.
The B. F. Goodrich Co.
H. J. Heinz & Co.
Lawyers Title & Trust Co.

LEHMAN BROTHERS

Amalgamated Leather Co.
American Light & Traction Co. subsidiaries
Detroit City Gas Co., St. Paul Gas Light Co., San Antonio Public Service Co.
Anglo-Chilean Consolidated Nitrate Corp. and Guggenheim Bros.
Bing & Bing, Inc.
Cuyamel Fruit Co.
R. H. Macy & Co.

Phoenix Hosiery Co.
Pierce Petroleum Corp.
Spear & Co.
Leonard Lietz, A. G.
Underwood Typewriter Co.
Yellow Cab Manufacturing Co.
Knickerbocker Ice Co.
National Enameling & Stamping Co.
Stern Brothers

"EXHIBIT No. 1887," introduced on p. 12367, is on file with the committee.

"EXHIBIT No. 1785," introduced on p. 12367, is on file with the committee.

"EXHIBIT No. 1786," introduced on p. 12367, is on file with the committee.

"EXHIBIT No. 1784," introduced on p. 12367, is on file with the committee.

EXHIBIT No. 1788

[From the files of Goldman, Sachs & Co.]

WC:G

JANUARY 26, 1927.

Mr. PHILLIP LEHMAN,
16 William Street, New York, N. Y.

DEAR MR. LEHMAN: I am glad to acknowledge receipt of your letter of the 25th instant, and to confirm the substitution of the following for paragraph 7 of the agreement dated January 5, 1926:

"These arrangements do not apply to trading accounts, and each firm shall be free to form and manage trading accounts in any securities of the listed corporations without offering the other a participation therein. However, if either firm acquires a block of securities of any of the listed corporations other than by purchase in the open market, or acquires an option on a block of such securities, it shall afford the other the option to participate therein up to its proportion in the original business of the two firms with respect to such corporation."

It hardly seems necessary to redraft the agreement, and I suggest that the same result can be accomplished by attaching this letter to your copy of the above mentioned agreement.

Yours very truly,

(Signed) WADDILL CATCHINGS.

EXHIBIT No. 1789

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—San Francisco—St. Louis

(Hand written:) Signed copy sent to G. S. & Co. 10/5/29.

AHG:MS

GOLDMAN, SACHS & Co.,

30 Pine Street, New York, October 3, 1929.

LEHMAN BROTHERS,

1 William Street, New York, N. Y.

DEAR SIRS: With reference to the agreement to be dated October 3rd, 1929, which we propose to enter into with Gimbel Brothers, Inc., with respect to the formation of a syndicate for the underwriting of 168,000 shares of an offering of 373,500 shares of its common stock to its stockholders, this is to confirm our understanding with you as follows:

1. Lehman Brothers and Goldman, Sachs & Co. shall each have a 50% interest in the compensation to be paid by the Company to them for their services in forming the Syndicate, and, in the event such Syndicate is formed, shall share in the obligations of Syndicate Managers as in the above mentioned agreement set forth in the same proportion.

2. We attach hereto a proof of the Syndicate Agreement in this matter to be dated October 4th, 1929, and request that you confirm our understanding that we are authorized to sign such Syndicate Agreement in your behalf as parties of the first part, and that we are to act as agents for the Syndicate Managers, keep the Syndicate books, manage the trading account referred to in the Syndicate Agreement and that we are authorized to sign all documents or letters in connection with the Syndicate in behalf of the Syndicate Managers.

Please confirm the foregoing by signing and returning the enclosed duplicate of this letter, whereupon it will constitute a binding agreement between us.

Very truly yours,

(Hand written:) 25 & ----- of which we have 50% agn't to come.

EXHIBIT No. 1790

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—San Francisco—St. Louis

GOLDMAN, SACHS & Co.,

30 Pine Street, New York, October 10, 1929.

LEHMAN BROTHERS,

1 William Street, New York, N. Y.

DEAR SIR: With reference to the Agreement dated October 10, 1929 which we propose to enter into with The May Department Stores Company providing for the underwriting by us of an offering of 116,934 shares of its Common Stock to its Common stockholders with the right to form a syndicate in connection with such underwriting, this confirms our understanding with you as follows:

1. Lehman Brothers and Goldman, Sachs & Co. shall each have a 50% interest in the compensation to be paid by the Company to them for their services in forming the Syndicate, and, in the event such Syndicate is formed, shall share in the obligations of Syndicate Managers as in the above mentioned agreement set forth in the same proportion.

2. Goldman, Sachs & Co. and Lehman Brothers shall be Managers of any Syndicate formed pursuant to the above mentioned agreement and we shall have the right to sign the Syndicate Agreement in your behalf. Goldman, Sachs & Co. may exercise alone all authority and discretion in connection with the above mentioned agreement and vested in the Managers of the Syndicate by the terms of the Syndicate Agreement, may give such notices under the above mentioned agreement to the Company and to any syndicate so formed, may make such modifications as to the terms of such agreement and Syndicate Agreement as in their opinion may be necessary or appropriate and as do not change the general nature of the transaction, and may do all such things in connection therewith as they may in their sole discretion from time to time deem advisable. We shall have the right to send out all notices in connection with such agreement and syndicate in our joint names.

Please confirm the foregoing by signing the enclosed duplicate of this letter, whereupon it will constitute a binding agreement between us.

Very truly yours,

GOLDMAN, SACHS & Co.

CONFIRMED: October , 1929.

LEHMAN BROS.

(Lehman Brothers)

(Arthur L.)

EXHIBIT No. 1791

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—San Francisco—St. Louis

GOLDMAN, SACHS & Co.,

30 Pine Street, New York, March 14, 1928.

ABK:EMcG

THE B. F. GOODRICH COMPANY, COMMON STOCK UNDERWRITING SYNDICATE

Messrs. LEHMAN BROTHERS,

16 William Street, New York, N. Y.

DEAR SIR: Referring to our letter of January 4, 1928, we wish to advise you that we have this day received from the Bankers Trust Company, check in the

amount of \$53,133.04, representing our one-third ($\frac{1}{3}$) share of the net profit realized in the above-named account.

We accordingly enclose herewith check in the amount of \$26,566.52 representing your one-half ($\frac{1}{2}$) share thereof.

Kindly acknowledge receipt of said check in full and final settlement of the one-half ($\frac{1}{2}$) share in our interest subrogated by us to you.

Yours very truly,

GOLDMAN, SACHS & Co.

Enclosure.

(Handwritten:) OK_____

EXHIBIT No. 1792

[From the files of Lehman Brothers]

NEW YORK, April 22, 1930.

MESSRS. LEHMAN BROTHERS,
1 William Street, New York, N. Y.

DEAR SIR: We enclose herewith a draft of the underwriting agreement dated April 22, 1930, which is about to be entered into between The B. F. Goodrich Company, on the one hand, and Otis & Co., Goldman, Sachs & Co. and Chase Securities Corporation, as Bankers, on the other hand, providing among other things for the underwriting by the Bankers of the proposed offering by The B. F. Goodrich Company to its stockholders of \$30,000,000 of Fifteen-Year 6% Convertible Gold Debentures of The B. F. Goodrich Company at 98 and accrued interest. The three above named banking houses are jointly and severally liable for the Bankers' obligations under this underwriting agreement; and by arrangement among themselves each of the three above named banking houses has a thirty-one and one-third per cent. interest in this underwriting and Continental Illinois Company and The C-T Securities Company each has a three per cent. interest in this underwriting.

This is to confirm our understanding with you that we have subrogated to you one-half of our own interest in this original underwriting agreement (as distinct from any subsequent syndicates or groups) and that you are to share equally with us all the benefits, profits, risks, liabilities and expenses incident to our entering into said agreement on the terms above stated. It is understood that the terms of the underwriting agreement as finally executed may vary in some respects from the enclosed draft and that we shall also be free in our uncontrolled discretion to refrain from entering into any underwriting agreement if we deem advisable.

It is understood that the three above named banking houses shall be free to form such syndicates and groups for the purpose of taking over the underwriting commitment or for purchasing or disposing of any Debentures not subscribed for by the stockholders, on such terms and conditions and at such prices for the Debentures as they may in their uncontrolled discretion determine. We enclose a copy of the Underwriting Syndicate letter dated April 21, 1930, under which an underwriting syndicate is already being formed for the purpose of taking over the underwriting commitment on the terms therein stated.

Please confirm your acceptance of the foregoing by signing and returning the enclosed duplicate of this letter, whereupon it will constitute a binding agreement between us.

Very truly yours,

(Signed) GOLDMAN, SACHS & Co.

CONFIRMED:

(Lehman Brothers)

EXHIBIT No. 1793

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—San Francisco—St. Louis

GOLDMAN, SACHS & Co.,

30 Pine Street, New York, October 30, 1930.

ABK:EMcG

THE B. F. GOODRICH COMPANY

FIFTEEN YEAR 6% CONVERTIBLE GOLD DEBENTURES

PURCHASE GROUP

Messrs. LEHMAN BROTHERS,

1 William Street, New York, N. Y.

DEAR SIRs: Referring to our letter of April 22, 1930, we wish to advise you that we have this day received from Otis & Co., check in the amount of \$140,394.53 representing our pro rata share of the original profits realized in the above-named business.

Inasmuch as we subrogated to you a one-half (1/2) of our own interest in such purchase, we enclose herewith check in the amount of \$70,197.26 representing your share thereof.

Kindly acknowledge receipt of same in full and final settlement of such interest which we subrogated to you by signing and returning to us the duplicate of this letter.

Yours very truly,

per pro GOLDMAN, SACHS & Co.
A. B. KLEPPER.

Enclosure.

(Hand written:) _____

EXHIBIT No. 1794

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—San Francisco—St. Louis—Seattle

GOLDMAN SACHS & Co.,

30 Pine Street, New York, May 5, 1926.

ABK:GOT

CONFIDENTIAL.

\$1,000,000.00

PILLSBURY FLOUR MILLS, INCORPORATED

SERIAL 5½% COLLATERAL TRUST NOTES

ORIGINAL PURCHASE ACCOUNT

Messrs. LEHMAN BROTHERS,

16 William Street, New York, N. Y.

DEAR SIRs: Referring to our letter of February 27, 1926, we wish to advise you that all the Notes contained in the above Account have been disposed of. We have, therefore, terminated said Account as of the close of business today, and enclose herewith check for \$5,789.39, representing your one-third share of the profits contained therein.

Kindly acknowledge receipt of same in full and final settlement of your interest therein.

Yours very truly,

per pro GOLDMAN, SACHS, & Co.,
T. E. McCURLIFFE.

Encl.

(Handwritten:) Cr. Syndicate Profits. J. E. C.

(Initialed:) JLK.

EXHIBIT No. 1795

[From the files of Goldman, Sachs & Co.]

ALBERT C. LORING, *President.*
 CHARLES S. PILLSBURY, *Vice Pres.*
 JOHN S. PILLSBURY, *Vice Pres.*
 ALFRED F. PILLSBURY, *Treasurer*
 CLARK HEMPSTEAD, *Secretary.*

PILLSBURY FLOUR MILLS COMPANY

Minneapolis, Minn., U. S. A.

EXECUTIVE OFFICES

(Handwritten:) S J W—Please note return. EHG.

MAY 31, 1927.

GOLDMAN, SACHS & Co.,

30 Pine Street, New York City.

Lane, Piper & Jaffray, Inc., Minneapolis, Minnesota.

(Attention of Mr. Catchings.)

DEAR SIRs: Upon the return of Mr. John S. Pillsbury and Mr. Clark Hempstead, a conference of our directors was held, resulting in a letter to Lehman Brothers, a copy of which is enclosed.

We have determined that it is for our best interests to satisfy only two banking houses, and therefore do not wish you to offer any participation in the profits of this business to Lehman Brothers or anyone other than yourselves.

Respectfully yours,

A. C. LORING,

President, Pillsbury Flour Mills, Incorporated.

Encl.

EXHIBIT No. 1796

[Letter from files of Lehman Brothers.]

(Hand written.) Cuyamel.

MARCH 13, 1925.

Messrs. Goldman, Sachs & Co., A. G. Becker & Co., Ames, Emerich & Co.,
 Hibernia Bank & Trust Company, Newman, Saunders & Co., Inc., Central
 Union Trust Company of New York, Mr. S. ZEMURRAY.

GENTLEMEN:—Referring to the contract of even date herewith, between Cuyamel Fruit Company, and Lehman Brothers, Goldman, Sachs & Co., and A. G. Becker & Co., for the purchase of \$5,000,000 Fifteen Year 6% Sinking Fund Gold Bonds of Cuyamel Fruit Company, please confirm our understanding as follows:

Each of the following have an interest in such contract in the following amounts:

Lehman Brothers-----	\$950,000
Goldman, Sachs & Co.-----	\$950,000
A. G. Becker & Co.-----	\$500,000
Ames, Emerich & Co.-----	\$500,000
Newman, Saunders & Co., Inc.-----	\$400,000
Hibernia Bank & Trust Company-----	\$400,000
Central Union Trust Company-----	\$300,000
S. Zemurray-----	\$1,000,000

 \$5,000,000

In the case of S. Zemurray, it is understood that his share of the profits of the Group is to be reduced by 1¾% of the principal amount of the Bonds representing his interest, and that such amount shall be distributable to the members of the Group other than Central Union Trust Company and himself in proportion to their interests.

Please confirm our understanding that we are authorized to sell such Bonds for the Group upon such terms and conditions as we may determine and in

connection therewith to form such Bankers Syndicate, Syndicate and/or Selling Group and upon such terms and conditions as we may determine of which we, Goldman, Sachs & Co., A. G. Becker & Co., and Ames, Emerich & Co., shall be the Managers.

Kindly confirm your understanding of the above by signing the enclosed duplicate.

Yours truly,

Confirmed.

EXHIBIT No. 1797

[From the files of Goldman, Sachs & Co.]

Boston—Chicago—Philadelphia—San Francisco—St. Louis

GOLDMAN, SACHS & CO.,

30 Pine Street, New York, October 15th, 1928.

LG: AS

MESSRS. LEHMAN BROTHERS,

16 William Street, New York, N. Y.

DEAR SIRs: With reference to the contract which we are jointly to enter into with Pet Milk Company, a Delaware corporation, for the purchase, at the price of \$33 per share, of 55,161 shares without par value of its common stock to be presently issued, this is to confirm our understanding with you as follows:

(1) Our two firms and our associates are respectively to have an interest in and liability under the above-mentioned contract with Pet Milk Company and in the account formed by us in connection therewith as follows:

Goldman, Sachs & Co.	33½ %
Lehman Brothers	33½ %
J. S. Alexander and associates	16¾ %
John Rovensky	16¾ %

All profits, losses, and expenses incident to the transaction shall be treated as profits, losses and expenses of this account.

(2) Our two firms shall be joint managers of this account and of any syndicate or group formed by us for the offering of the above-mentioned shares of stock; but Goldman, Sachs & Co., acting alone and either in the names of our two firms as managers or in their own name alone, may execute the above-mentioned contract in such form, may exercise all of the authority and discretion vested in us by the terms of this agreement or otherwise in connection with this account, may give such notices under the above-mentioned contract, may make such modifications therein (whether of form or of substance), may make such compromises and settlements thereunder and may do all such things in connection therewith, as they may in their sole discretion from time to time deem advisable. The names of our two firms shall appear together in any advertisement or communication to dealers in connection with the offering or sale of the stock hereunder.

(3) We shall be authorized, for this account, to borrow money and/or stock from such persons (including ourselves) and upon such terms and conditions, and to pledge as security therefor any shares of stock or other assets held in such account, including your and our obligations hereunder, as we may in our discretion from time to time deem advisable, and to take up and pay for, and to deal with for such length of time as we may see fit, any or all of the above-mentioned shares of common stock, including the right to offer and resell, and to secure the underwriting of the resale of, any or all thereof, on a "when issued" basis or otherwise, at such prices, to or through such persons (including ourselves) or such syndicates or groups (in which we may participate and of which we may be the managers) and upon such terms and conditions as we may in our sole discretion from time to time determine, and to publish such advertisements and circulars in connection therewith as we shall in our sole discretion approve.

(4) We shall also be authorized for this account to trade in the common stock of Pet Milk Company, with full discretionary powers, subject to the limitation that the net committing of the account at any one time, for long or short

account, shall be limited to 20,000 shares (in addition to any unsold balance of the above mentioned 55,161 shares taken up and paid for by us and at the time remaining on our hands).

(5) We may call upon you, on two days' notice, to take up for carrying purposes only, your pro rata share of the stock held for this account, and we may call upon you at any time to put up collateral in such amounts as we may deem advisable.

(6) The duration of this account shall be for such period as we shall from time to time determine, but not to exceed one year from the date of our taking up and paying for the above-mentioned 55,161 shares of Common stock.

(7) At the expiration of this account, you shall take up and pay for your pro rata interest in any net long position of the account, at the net cost thereof to the account, or shall contribute your pro rata portion of the stock necessary to make good any net short position of the account. We may, however, sell any or all such shares then held for the account, or may turn over any such net short position, or any part thereof, of the account, upon such terms as we may deem advisable, to any person or group and we may participate in the purchase or taking over thereof.

If the foregoing is in accordance with your understanding, will you kindly sign and return the enclosed duplicate of this letter, whereupon it will constitute a binding agreement between us.

Very truly yours,

GOLDMAN, SACHS & Co.

EXHIBIT No. 1798

[Copy from the files of Lehman Bros.]

FEBRUARY 6, 1936.

Reply * * *

To: Mr. Philip Lehman,
Mr. Robert Lehman,
Mr. Monroe C. Gutman,
Mr. Paul Mazur,
Mr. Wm. J. Hammerslough,
Mr. John Hertz,
Mr. E. J. Bermingham.

See G. S. Statistics.²

MESSRS GOLDMAN, SACHS & Co.,
30 Pine Street, New York City.

GENTLEMEN As of October 26, 1925, and January 5, 1926, you and we agreed to memoranda setting forth a mutual understanding that appeared to both of us equitable and satisfactory. Briefly and generally stated, these memoranda outlined the arrangements as they related to both of us and our equal participation in future financing for a list of corporations. The list embraced those corporations with which our two firms had a relationship over a great many years.

We believe we have proceeded completely in accordance with these memoranda and their spirit. The recent instances of the financing plans for Brown Shoe, National Dairy, and Endicott Johnson indicate clearly that you have not felt bound by your agreements with us, in spite of the fact that no notice has as yet been given us of the termination of the arrangement to which both firms were parties.

In view of the situation, we see no alternative for us but to inform you that inasmuch as the arrangement has not been controlling upon you for some time, we cannot accept any longer any commitment inherent within our written arrangements which we have always assumed as controlling upon us.

We feel that we have done our utmost to fulfill an arrangement which both of us had decided to continue; but we feel also that you have made further continuance of our arrangement no longer possible.

Very truly yours

jmh-mf
cc to Mr. Arthur Lehman,
Mr. Allan S. Lehman.

¹ Handwritten, illegible

² Handwritten

EXHIBIT No. 1799

[From the files of Lehman Brothers]

Boston—Chicago—Philadelphia—St. Louis

(Handwritten:) Joint Sales. No precedent. Joint Managers. Public Issue—
Advertise.

GOLDMAN, SACHS & Co.,
30 Pine Street, New York, June 25, 1935.

RVII: MW

CONFIDENTIAL

Re: Brown Shoe Company, Inc.

LEHMAN BROTHERS,

One William Street, New York, New York.

Attention: Mr. John M. Hancock

(Handwritten:) St. Louis. Horton. Time, 6:05. Train, Penn. Space,
65.66, Car 154. Person. 4 pm.

GENTLEMEN: There is enclosed a memorandum of understanding relative to possible financing for the above-named company. This memorandum was written after discussion this morning with Mr. E. R. McCarthy, Vice President of the company, who is conducting the negotiations for the company. This memorandum reflects the results of our discussion this morning, but it is not a contract, nor has it been initialed by either the company or ourselves; and it is subject to revisions which may result tomorrow from discussions with the company's counsel. The company's counsel was not present at our discussion this morning.

Certain provisions of this memorandum appear to us quite drastic and possibly not in the best interests either of the company or of the underwriters. We have in mind, therefore, the possibility of volunteering to modify certain of these provisions as the negotiations are concluded, as, for example, to provide for the call of the debentures at any time on forty-five days' notice and to provide for issuance of additional funded debt subject to restrictions as indicated on the enclosed alternative Page 3.

We believe that this prospective business should be kept as confidential as possible until the filing of the registration statement and even then we contemplate that the coupon rate on the new debentures will not be stated, but will be added to the registration statement by subsequent amendment.

We should appreciate your confirming that you are in substantial agreement with the terms of this memorandum and also that you agree that Goldman, Sachs & Co. is to receive a fee of $\frac{1}{4}\%$ of the principal amount of the debentures purchased, as compensation for services in connection with the purchase and sale of the debentures.

Very truly yours,

GOLDMAN, SACHS & Co.

(Initialed:) J. M. H. 6/27/35.

EXHIBIT No. 1800

[From the files of Goldman, Sachs & Co.]

New York—Boston—Philadelphia—Chicago

GOLDMAN, SACHS & Co.

314 North Broadway

WALTER J. CREELY, MANAGER

Telephone Chestnut 9070

St. Louis, June 26, 1935.

Mr. WALTER E. SACHS,
New York Office.

DEAR Mr. SACHS: The good news contained in yours of the 24th far outweighs the bad news. Naturally I am disappointed to learn that Stix, Baer & Fuller have decided to do nothing at the present time. I think we should watch it closely, as they will undoubtedly see more of this refunding, which should have a tendency to whet their appetite.

I congratulate you on the Brown Shoe Co. matter. I learned this three or four days ago and, of course, I have been sleeping well ever since. I hope it will not be necessary to take in more than one partner, (if that) and that your office will also confer with me when it comes to arranging the selling group of St. Louis dealers. You may be sure all this will be held in strict confidence until it is given to the press.

Very truly yours,
WJC:AO

WALTER J. CREELY.

EXHIBIT No. 1801

[From the files of Goldman, Sachs & Co.]

Envelope Marked "Confidential"
WES—mah

JUNE 28, 1935.

Mr. WALTER J. CREELY,
*C/o Goldman, Sachs & Co.,
St. Louis, Mo.*

DEAR CREELY: I have your letter of June 26th.

As you probably know, Bob Horton is out in St. Louis for a day or two, helping the Brown Shoe people on their registration statement, etc. I suggest, if he is not too busy, that you try to have him give you a few minutes, so that you can give him *direct* your views as to the St. Louis dealers.

I don't know quite what you mean by the word "partner." We have an old contractual obligation to do this business with Lehman Bros., but they and we will be the only underwriters.

We will, of course, form a selling group, giving special consideration to St. Louis dealers, but reserving a sufficient amount for ourselves, so that we can sell quite a few bonds in St. Louis ourselves and make the selling commission. We have not worked this out in detail as yet, but our present idea is to give particular consideration in the selling group to Gatch Bros. and to Smith Moore and probably in a lesser degree to Stiefel and perhaps Francis Bros. However, you might give Horton, or if you cannot reach him, send the same on to me, your idea as to the St. Louis dealers. Naturally, this part of the work will come somewhat later, as the important thing now is to prepare the registration statement, the indenture and the prospectus, the formation of the selling group coming a little later. As things look now, we hope to be ready to sell the issue about August 1st.

Sincerely yours,

GOLDMAN, SACHS & Co.,

EXHIBIT No. 1802

[From the files of Lehman Brothers]
Boston—Chicago—Philadelphia—St. Louis

GOLDMAN, SACHS & Co.,
30 Pine Street, New York, September 27, 1935.

ABK:EMcG

BROWN SHOE CO., INC.—FIFTEEN-YEAR 3¾% SINKING FUND DEBENTURES
DUE AUGUST 1, 1950

MESSRS LEHMAN BROTHERS,
1 William Street, New York, N. Y.

DEAR SIR: Having charged your account with \$5,000.00 representing compensation due us, for our services in connection with this business, we enclose herein our check in the amount of \$30,000.00 on account of the profits realized by you with respect to your several purchase and sale of \$2,000,000.00 principal amount of the above described Debentures, together with your approximate share of the balance arising from transactions in the Purchaser's Account.

At such time as we receive the $1\frac{1}{2}\%$ discount on the preferred stock redeemed, we shall then account to you in full for the balance of the profits due you in connection with this business.

Kindly acknowledge receipt of same by signing and returning to us the duplicate of this letter.

Yours very truly,

per pro GOLDMAN, SACHS & Co.
A. B. KLEPPER.

ENCLOSURE

(Handwritten:) Cr. Synd. Profits.

EXHIBIT 1803

[From the files of Lehman Brothers]
Boston—Chicago—Philadelphia—St. Louis

GOLDMAN, SACHS & Co.,
30 Pine Street, New York, December 16, 1935.

ABK:EMcG

BROWN SHOE CO., INC.—FIFTEEN-YEAR $3\frac{3}{4}\%$ SINKING FUND DEBENTURES
DUE AUGUST 1, 1950

MESSRS LEHMAN BROTHERS,
1 William Street, New York, N. Y.

DEAR SIR: Referring to our letter of September 27, 1935, we wish to advise you that we have this day accounted to Brown Shoe Company in connection with the interest adjustment and discount on the preferred stock redeemed and accordingly there is a balance in the account of \$6,674.28.

We therefore enclose herein check in the amount of \$3,337.14, same representing your one-half ($\frac{1}{2}$) share thereof and being the balance due you in full and final settlement of your interest in the above named account.

Kindly acknowledge receipt of same by signing and returning to us the duplicate of this letter.

Yours very truly,

per pro GOLDMAN, SACHS & Co.
A. B. KLEPPER.

ENCLOSURE

(Handwritten:) Cr. Orig. Purchase Syndicate Profits.

EXHIBIT No. 1804

[From the files of Goldman Sachs & Co. Letter from H. S. Bowers to George W. Johnson]

HSB.BEW

JANUARY 31, 1936.

MR. GEORGE W. JOHNSON,
c/o Endicott Johnson Corporation, Endicott, N. Y.

DEAR GEORGE: Supplementing our talk over the telephone last night, I thought you would be interested in learning of the reaction we got from the very best investment bankers down here as to the Endicott Johnson underwriting.

It is the custom for the house leading such a business privately to sound out by word of mouth important possible underwriters well ahead of the actual signing of the contract. We therefore approached Morgan, Stanley & Co.—this is the investment security end of J. P. Morgan & Co.—Kuhn, Loeb & Co., Brown Harriman & Co., and The First Boston Corporation. These last two concerns are the most active and leading houses in selling investment securities in the country. Every one of these concerns was delighted to be included in the business, and I think you could not help but have been pleased if you could have heard their comments regarding Endicott Johnson. Some knew more about the concern and some knew less, but instantly, when we mentioned the

name, "That's a fine concern" came back the answer, and what struck me and pleased me more than anything else was the comment which we got, both from Morgan, Stanley & Co. and Kuhn, Loeb & Co., "We like that concern very much because they have an extraordinarily fine and exceptional labor policy". Frankly, I was rather surprised that some of these chaps, who, necessarily, were not close to the concern and were supposed to be "money grubbers" down here in Wall Street, should have had the appreciation, which they definitely did have,—these comments of theirs were, mind you, made absolutely out of the clear and with no suggestion or priming on my part—of what was the finest, most fundamental and lasting asset of Endicott Johnson, namely, the marvelous relation which had been built up with the workers.

Our underwriting group, then, will be, in addition to G. S. & Co., these four great houses mentioned above, and smaller amounts placed with Kidder, Peabody & Co. and W. E. Hutton & Co., this last the house with which we have done the Champion Paper and Fibre business. We are also including—naturally, in a small way—Hartley Rogers & Co., and, what I think will please them very much, are allowing their name to be listed in the final registration statement with all of the above houses. This was something which young Rogers, a nice chap, was very anxious if possible should be done. Naturally, it helps his prestige and standing.

Perhaps Mr. George F. and Charlie will be interested in the above, and if you think they would I am enclosing a copy of this letter which you could send them.

Everything is moving along well here, and we expect to file the papers in Washington for registration tomorrow.

With regards,

Truly yours,

EXHIBIT No. 1805

[From the files of Goldman, Sachs & Co.]

SJW:ATL.

FEBRUARY 7, 1936.

MESSRS. LEHMAN BROTHERS,
1 William Street, New York, N. Y.

GENTLEMEN: We have your letter of February 6, 1936.

We find ourselves unable to agree with the statement of the facts contained therein, but we cannot see that it will serve any useful purpose to enter into a discussion of these issues which are apparently highly controversial.

Therefore, we shall content ourselves with saying that while we cannot accept your statement of the premises upon which your action is based, we, nevertheless, accept your conclusion that the arrangement between us has been terminated.

Yours very truly,

(Sgd.) GOLDMAN, SACHS & Co.

EXHIBIT No. 1806

[From the files of Lehman Brothers. Letter from Lehman Brothers to Continental Can Company, Inc.]

SEPTEMBER 20, 1937.

BOARD OF DIRECTORS, CONTINENTAL CAN COMPANY, INC.,
New York, N. Y.
(Attention: Mr. Oscar C. Huffman, President)

DEAR SIR: We are writing to you relative to the conversation which Mr. Hancock had with Mr. Huffman on September 10.

The minor position offered to us in the presently contemplated financing of the Continental Can Company makes acceptance by us impossible. As this may represent an end to a period of long association with, and sponsorship

of, your Corporation by our firm, it is a matter of deep regret to us. However, we believe that the action which we feel has been forced upon us should be also a matter of substantial concern to your Corporation, to your Directors, and to your stockholders.

Our decision has been reached after a careful review of the history of our past interest in your business, our sense of responsibility not only to you but to a great many stockholders, and our public sponsorship of your Company during years of close association.

Because of the seriousness of our concern, we are writing you at some length, and we request that this letter be read to your Directors during the course of their next meeting.

The association between the Continental Can Company and Lehman Brothers has existed for more than a quarter of a century.

In 1912 we shared equally in the leadership of the offering of 55,000 shares of Preferred stock of the Continental Can Company—the initial introduction of your securities to the investing public.

Since that time we have been associated with six separate pieces of financing for the Continental Can Company. In 1917, 20,000 shares of Common stock were underwritten. In 1923, 20,000 shares of Preferred stock were underwritten. In 1924, an offering of 66,313 Common shares was underwritten; 68,262½ Common shares in 1928, 152,917 Common shares in 1929, and 177,679 Common shares in 1936, were offered and underwritten.

In all of these individual instances of financing, our position was that of equality as to financial commitment except for a difference of one-tenth of one percent in the 1936 issue.

During these past twenty-five years, we have been equal sponsors and equal factors in the distribution of 75,000 shares of Preferred stock and approximately 500,000 shares of Common stock, aggregating in value more than \$39,000,000 at the offering dates.

Within the period covered by our equal participation in the sponsorship of the securities of your Corporation, the number of stockholders has grown from a mere handful to thousands. The earnings and increase of assets due to excellent management have converted a comparatively small-sized business into one of the great industrial institutions of the country.

Philip Lehman and later Arthur Lehman served actively as Directors of your Company for a great many years. In the 18 months that have elapsed since Arthur Lehman's untimely death our firm has not been represented upon your Board. This lack of representation, as you know, was not of our choosing. It did not represent any change in the public responsibility we had assumed towards the shareholders of the business.

Over a period of twenty-five years, our association with the Company as principal bankers and our identification in the public mind as financial sponsors of your Company, gave us reason to believe that you recognized that equal relationship and responsibility. Our association was a matter of simple fact.

We make no claim to any substantial contribution to the management that has built the Continental Can Company into its present size and effectiveness; that is not the function of bankers. But we do believe that our sponsorship of your Corporation has been an important factor both in providing capital upon a proper basis for the Company's requirements and growth, and also in the distribution of its securities and the creation of increasing confidence on the part of the investing public.

This service, these years of banking association, the value of our sponsorship, have been disregarded without provocation on our part, or prior warning to us. In place of the long-established relationship as principal bankers we have been asked to accept a definitely subordinate position. Our sense of responsibility as well as our sense of dignity and of service rendered make acceptance impossible. We deeply regret the necessity of this decision, but if the suggestion made to us stands we have no alternative but to terminate our sponsorship of the securities of your Corporation.

Very truly yours,

EXHIBIT No. 1807

[From the Files of Lehman Brothers]

Office of the President

(Handwritten:) Conf. 1937.

CONTINENTAL CAN COMPANY, INC.,

100 East 42nd Street, New York, N. Y., September 29, 1937.

MESSRS. LEHMAN BROTHERS,

1 William Street, New York, N. Y.

(Attention Mr. John M. Hancock)

DEAR SIRS: Your letter of the twentieth instant addressed to the Board of Directors has been received, and as requested by you, has been read to them and discussed fully.

The Company has always considered Messrs. Goldman, Sachs & Company as its primary bankers. The Company's original negotiations when it was formed into a public company nearly twenty-five years ago were carried out through them and in recent years when financing was required, the preliminary terms were always arranged in the first instance with Goldman, Sachs & Company. Naturally over this period of years there have been changes in the underwriting positions, but frankly, we have never felt that this was a matter over which we should exercise any control, and we still feel that this is the proper attitude for our Company to take.

We regret exceedingly that you could not see your way clear to accept the participation offered to you in the proposed new financing. We appreciate, and always shall, the cooperation and help the Company has received from your firm during the past many years, and shall continue to entertain the same kindly feelings toward your good firm that we have always felt.

Very truly yours,

O. C. HUFFMAN,
President.

OCH HD

EXHIBIT No. 1808

[From the files of Lehman Brothers. Letter from Philip Lehman to Continental Can Company, Inc.]

OCT. 4TH 1937.

Mr. O. C. HUFFMAN,

President, Continental Can Co., Inc.,

100 East 42nd Street,

New York City.

MY DEAR MR. HUFFMAN: May I take the privilege of acknowledging, on behalf of my firm, your letter of September 29, 1937.

It happens that I was a direct party to the negotiations which resulted in the first public financing of the Continental Can Company, Inc. nearly twenty-five years ago. May I therefore state upon the basis of firsthand knowledge that these negotiations with the company's officials were participated in equally by Mr. Henry Goldman and myself. The relationship between the bankers and the company was originally established upon a basis of absolute equality; and that coordinate relationship continued during the years of my service as a director of your company and for many years beyond that time.

All of this we pointed out in our letter of September twentieth. The chief purpose of my undertaking a personal answer to your letter of September 29th lies in my desire to correct your misunderstanding of the original relationship which my firm possessed with the Continental Can Company, Inc.

I would be grateful if you would inform your directors of the facts as I have stated them.

Yours very truly,

PL: AB

EXHIBIT No. 1809

[Letter from Mellon Securities Corporation to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

MELLON SECURITIES CORPORATION,
Pittsburgh, Pennsylvania, January 5, 1940.

Mr. PETER R. NEHEMKIS, Jr.

*Special Counsel, Investment Banking Section,
Securities and Exchange Commission, Washington, D. C.*

DEAR MR. NEHEMKIS: This will confirm my telegram to you of even date as follows:

"It is hereby stipulated and agreed that the document listed below is a true copy of original entry placed in the files of Mellon Securities Corporation and was duly entered or noted by C. L. Austin: Entry pertaining to Jones and Laughlin Steel Corporation as of January 11, 1936, as follows: quote Mr. Hackett spoke to me yesterday about pressure being exerted on them on the part of Continental Can on the inclusion of Goldman, Sachs & Co. Goldman, Sachs & Company has a director on the Board of Continental Can. Continental Can, of course, is an important customer of Jones and Laughlin. I informed Mr. Hackett that we had not attempted to progress further the organization on the group and that I thought it would be best to let the matter rest for the time being and would give it consideration later on, to which he agreed. Unquote

C. L. AUSTIN,
Vice President, Mellon Securities Corporation."

C. L. AUSTIN
mtw

Very truly yours,
C. L. AUSTIN, *Vice President.*

EXHIBIT No. 1810

(From the files of Goldman, Sachs & Co.)

FEBRUARY 11, 1938.

Mr. C. M. CHESTER,

*Chairman of the Board, General Foods Corporation,
250 Park Avenue, New York, New York.*

DEAR CLARE: Referring to your letter enclosing the resolution of January 27 with reference to the proposed issue of preferred stock, I have given the matter considerable thought, and have concluded that there are two fundamental principles involved which I ought to lay before you.

First, the resolution contemplates that the transaction should be handled by two firms jointly, and this I believe to be fundamentally unsound and inefficient. Under present day conditions, an offering of this kind covers a wide field. There is the negotiation with the company and the determination of the characteristics of the security. There is the registration with the S. E. C., a complex matter. Also, there is the problem of syndication, which calls for expert handling. Experience confirms that this is done best if responsibility and the making of decisions are centered in one firm. The company should be called upon to deal with only one firm in the negotiations; one firm should make the primary and detailed investigation and supervise the preparation of the registration statement and the handling of it with the S. E. C., and one firm can best deal with the intricacies of syndication. The centralization of responsibility is desirable and productive of the best results. If inefficiency and delay, and all the other evils of divided authority and responsibility are to be avoided, joint management must develop into formalism, with one party the real manager; and for many reasons that usually is undesirable.

Secondly, the resolution seems to contemplate that the manager of the syndicate shall not be compensated for management by the other members of the syndicate. What I have said above will summarize the amount of labor that the manager of the syndicate has to perform. It is unthinkable that all members of the syndicate should go through all the steps; it would be unworkable, inefficient and extremely expensive. This work requires special training and experience, and an organization qualified to handle it. No house could afford such an organization if the work had to be performed without compensation. Certainly, it is desirable from every

aspect that one of the underwriting houses should perform this service on behalf of all, and it is only fair that the house that does the work should be compensated for its services and the others should pay for the time and labor that they save. The so-called "management fee," that is, the payment made by the members of the syndicate to one of their number, is truly compensation for services performed, and is in no sense a profit such as was the amount that the originators of the business took in former days as the originator's profit.

Not only would it be unfair to do away with this compensation, but it would be unwise to do so. If it were eliminated from this transaction, there is no reason why it should not be eliminated from other transactions. The fact could not be kept secret, for it would have to be shown with the papers filed with the S. E. C., and the world would know it. In other transactions objection would be made to the payment when it was known that the compensation was not paid in this transaction. I ask you to think what the result would be if such compensation were entirely eliminated. If all underwriting houses received exactly the same, regardless of whether they did all the work or not, who would want or could afford to do all this work? What houses could afford to maintain expert and highly-trained organizations, if they would receive nothing more than the houses that did not? It would inevitably mean that the work of the investment banker would be done more poorly and more inefficiently. Frankly, I can think of few things as damaging in the public interest as would be the elimination of compensation to the managing house. For my own part, I would not want to see my firm a party to the establishment of this kind of a precedent, and I feel confident that, upon reflection, you would not want to be a party to it.

Therefore, I urge upon you the reconsideration of these matters, and would greatly appreciate an opportunity to discuss it with you further.

Sincerely yours,

SIDNEY J. WEINBERG.

SJW: MJL

EXHIBIT No. 1811

[From the files of Goldman, Sachs & Co.]

FEBRUARY 11, 1938.

Mr. C. M. CHESTER,

*Chairman of the Board, General Foods Corporation,
250 Park Avenue, New York, New York.*

DEAR CLARE: The attached letter I had prepared some days ago but held up the same upon your kind consent to allow me additional time, pending an attempt on our part to compose our differences with Messrs. Lehman Brothers in regard to this business as well as other businesses, concerning which there have been controversies in the past.

We set forth our position clearly to Lehman Brothers and went a long way in offering a solution consistent with sound business principles, but we have been unable to make any progress. Mr. Robert Lehman was away until Wednesday of this week, and left the city again last evening, and his firm has declined to act in his absence. In view of your request for promptness, we thought that we had no right to further delay our reply. Hence, I am now sending you my original letter which states these sound principles of handling businesses of the type in question. In these principles we firmly believe.

At the risk of repetition I now state our position and the conditions on which we are prepared to go forward with your business:

1. That the negotiations, the preparation of all papers and the syndication be handled by Goldman, Sachs & Co. alone.
2. That out of the gross spread between the purchase price of the securities and the sale price to the public, the other underwriters pay Goldman, Sachs & Co. compensation for the work of management of the business, as outlined in my other letter.
3. That Lehman Brothers be offered a participation in the underwriting equal to our own.
4. That we agree that Lehman Brothers' name in the prospectus may be on the same line as our own—our name on the left, theirs on the right; and that they may have their name on the syndicate letters if they so desire.

As the Resolution of the Board of January 27, 1938, provided that if our two firms could not reach an agreement you would do the prospective financing elsewhere, I now hope that you will reconsider the matter in the light of these letters. I cannot tell you how much I regret that the differences between Messrs. Lehman Brothers and ourselves have caused you an inconvenience.

Sincerely yours,

SIDNEY J. WEINBERG.

SJW: MJL
ENC.

EXHIBIT No. 1812

[From the files of Lehman Brothers. Letter from Robert Lehman to National Dairy Products Corporation]

FEBRUARY 18, 1936.

Mr. THOMAS H. MCINNERNEY,
President, National Dairy Products Corporation,
120 Broadway, New York, N. Y.

MY DEAR MR. MCINNERNEY:—I herewith tender my resignation as a director of National Dairy Products Corporation, for acceptance by the Board of Directors. I should appreciate it if you would have this letter read to the Board as a statement of the reasons for my action.

The firm Lehman Brothers was one of the three original bankers for your Corporation and responsible for its organization in 1924. For several years past, my firm, together with Goldman Sachs & Co., have been the two sole investment bankers for your Corporation. While Goldman Sachs & Co. have handled the details in their office, the two firms have dealt with your Corporation and all contracts with your Corporation have been executed by both of our firms, each assuming direct liability to your Corporation.

On a number of occasions in 1935, Goldman Sachs & Co. advised my firm of the contemplated financing by your Corporation. We had conferences with them and collaborated with them in working out a proposed plan of financing. We did not communicate directly with you but they advised us that they were negotiating with you in the matter in behalf both of themselves and ourselves.

About January 9, 1936, Goldman Sachs & Co. advised us that they had arranged with National Dairy Products Corporation that they should receive an overwriting fee of $\frac{3}{8}\%$ (about \$240,000.) upon the proposed financing, and that we would receive no share in such overwriting fee but that we would be permitted to participate in the underwriting upon identically the same basis as other investment bankers would be offered participations (except that our name would appear with theirs on the top line of any prospectus and that we would be joint syndicate managers with them). We protested to them that this proposal not only was a clear violation of a written agreement dated January 5, 1926, which existed between Goldman Sachs & Co. and ourselves, but wholly apart from that was an unwarranted attempt to deprive us of the position which we had had over many years as one of the two bankers of the Corporation on a parity with Goldman Sachs & Co.

The agreement provided generally for equal participation but there was an exception as to National Dairy, in which case my firm was entitled to an interest smaller in amount than Goldman Sachs & Co.'s interest but on the identical basis. In discussing the agreement with Mr. Weinberg on September 13, 1935, Mr. Hancock was told that "the interests will be equal" in any National Dairy financing, (though it must be pointed out that this discussion was not embodied in a modification of the agreement, as a general modification was under discussion).

We believe that your Corporation will not wish to take the position that the sole question involved is a dispute between Goldman Sachs & Co. and ourselves and a violation by them of their agreement with us, to which National Dairy Products Corporation is not a party. This would not seem to be a sound position for even if there had been no agreement between the banking firms, National Dairy will rightly desire to treat its bankers fairly but it is taking sides in the dispute between Goldman Sachs & Co. and ourselves by deciding to deal with Goldman Sachs & Co. as its bankers and to the exclusion of my firm and instead of, as in the past, with Goldman Sachs & Co. and ourselves jointly as its two bankers. This does not mean that we have insisted that the overwriting fee

must be divided equally between the two firms; the question as to what is a fair division of the fee is a matter for consideration by all three parties involved. We have, however, insisted that, as one of the two bankers of your Corporation, we are as a matter of principle entitled to some share in the overwriting fee.

I cannot agree with you that this matter has gone so far that it cannot be and should not be reopened, but if that is the position of your company, I am forced to the conclusion that National Dairy Products Corporation has, by its action, terminated our relationship with it as one of its two bankers. This termination we deeply regret in view of our long years of pleasant association with you and with the Corporation.

Under these circumstances, I think that there is no other course for me to pursue than to tender my resignation as a director of the Corporation.

With kindest personal regards, I am

Very sincerely yours,

(Initialed:) R. L.

EXHIBIT No. 1813

[From the files of Lehman Brothers]

Telephone Rector 2-8820

THOS. H. McINNERNEY, *President*

Cable Address "Pro dairy"

NATIONAL DAIRY PRODUCTS CORPORATION,
120 Broadway, New York, N. Y., February 21, 1936.

Mr. ROBERT LEHMAN,

Lehman Brothers, 1 William Street, New York, N. Y.

DEAR MR. LEHMAN: Your letter handed to me by Mr. Hancock with the request that I read it to our Board was read by me to them, and this is to advise you that the Board accepted your resignation with regret, to which I wish to add my own personal regret.

Sincerely yours,

THOS. H. McINNERNEY, *President*.

M/L

(Handwritten:) Noted. J. M. H. Shown to other partners. J. M. H.

EXHIBIT No. 1814

[From the files of Lehman Brothers]

MAY 18, 1937.

Mr. C. R. PALMER,

Cluett, Peabody & Co., 10 East 40th Street, New York City.

MY DEAR BOB:—I received your very kindly personal note last Friday and I appreciate it a great deal. I didn't like to bother you at all on your trip except to put before you the single question whether you knew any reason why this proposed financing should not be handled on a basis of equality for the two banking firms—equality in the amount of the underwriting as well as in prestige and standing that comes from the banking relationship to such a company as Cluett Peabody. You knew of no reason for not doing this and yet it hasn't worked out that way. I am forthright enough to say that I am very disappointed and fair enough to say that I think this unfair act was not intentionally and knowingly done to me by you and R. O. in any realization of the effects of your actions. I have left a wrong impression if you feel that I have any complaint over the fact that I learned of the financing through R. O. and not through you. At most such a complaint would be purely technical and would not go to the merits of the case. I have no such personal complaint and I am sorry to have given any such impression. In the hope of avoiding any possible misunderstanding arising from this present situation, I want to put my position squarely before you. I want to view the *facts* solely from the point of view of the company's best interests and when my self interest might be a factor in my *conclusions* you will be able to judge whether my conclusions are not also in the interest of Cluett Peabody.

There are only two principal questions worth discussing, and I have tried to keep my comment focused on them:

1. What was the best financing plan for Cluett Peabody, involving necessarily its relations to its bankers.
2. Procedure for determining the answer to that question, involving Cluett's relation to its directors.

The two are closely related.

First as to the facts, I understand that the financing plan was arrived at by you on behalf of the company, with the help, counsel and concurrence of R. O. and Green, and that a memorandum agreement was made without the previous knowledge or authorization of the Board, acting as such, or of its individual members.

Neither I nor my firm was consulted on the matter until a conclusion was reached and at that time I admittedly had the right to approve or oppose. I wasn't in a position to approve the plan in principle for I hadn't been a party to the discussions and I wasn't satisfied that a better plan than a stock split-up and offering of rights could be presented to and accepted by the members of the Board who also had not been in any previous discussions. I do not question the stock split-up. The Lehman Corporation is now doing the same thing. I did question whether the whole financial situation of the company and particularly as it involves its future dividend policy was considered sufficiently. I do feel that the question of calling the preferred stock should have been very carefully considered and that is such an important question it deserved the careful consideration of the whole board.

If the board at its last meeting did carefully consider and decide that the stock split-up and offering of rights was best, then it should have considered its relations to its bankers and how best to use them for Cluett's benefit.

After three men, you, G. A. Cluett and E. H. Cluett, all separately told me that none knew a reason why the financing should not be handled on a basis of equality of the two banking firms represented on the board, and after R. O. told me on Tuesday afternoon that the board would drop the financing unless it were so worked out, and after Green and I both advised that there was no interference to the company plans in a week's delay in which this equal basis could be agreed upon, I was confronted on Wednesday, May 12, with a statement that the board had changed its mind and had decided to go ahead on its original plan which subordinated us to the other firm.

I am ready to accept the opinion of the Cluett board as to what is best for Cluett in connection with its relations with bankers, if the facts are examined before a decision is reached. In this case I doubt that the facts were looked into, and sometime I want you to learn more about them.

In the course of the discussions some matters have arisen which I think are worth further consideration so I am going to present one. R. O. referred to the fact that our difference with Goldman Sachs put Cluett in a squeeze. I told him that I was sorry Cluett was in that position but that I had not put it there, but rather Cluett had put itself there by not consulting with me or the board at an early date and before it made any commitment to Goldman Sachs. I think you will find R. O. agrees with my position on this. I did not say to him at the time but it is obvious that Goldman Sachs is using Cluett in its dispute with us. It is also obvious that Cluett chose to squeeze me and be itself squeezed by submitting to an unfair demand rather than squeeze the men making the unfair demand. If he threatened to resign in case Cluett did not give him undisputed leadership in its financing, did he not control the Cluett financing by the threat which the Board undoubtedly felt would, if carried out, harm the company. After the Board took its position Tuesday and when it reversed its position Wednesday in the face of that threat, Cluett surrendered its judgment to a man who was willing to harm Cluett for his own purposes. Instead of threatening to resign as I too might have done, I made no demands and it now seems that I get the rough end of the stick because I was reasonable in my request for an equal position. The man who would not work on this basis does not claim to me that my suggestion of a fair plan was not fair. He only asserts that he owes no consideration to Lehman Bros. and that he will not do what I proposed. If my suggestion was not fair, in fact, then he should object to it on that ground. I did not feel that I was asking him to do me or my firm a favor. I felt I was asking him to do what Cluett wanted done.

I have been given no reason and I know of none why my position is not fair. The net fact is that one man will not accept my suggestion, regardless of its fairness, and he governs the action of the Cluett board. When the board reversed its former position and accepted his demand it made a decision in effect that my suggestion was not in the best interest of Cluett to accept, and it may have concluded that my suggestion was not a fair one. I do not accept either conclusion as sound, or soundly arrived at.

Now as to the purely personal aspects of the situation. It was personally embarrassing to be left out of the discussions but that is a very minor point. The main point is whether the action taken by Cluett is wise and sound and in Cluett's best interest. I have no desire to dominate any industrial company as to its financing, but I do object to being asked to ratify a plan arrived at as this one was. In all the talk of the last year that "directors must direct" and of the present day that "bankers must not dominate industrial companies" I feel there was need for very careful handling of the problem and I do not see that this case had that kind of handling.

It is quite impossible for me to review all the minor points of discussion in this letter but I am glad to go over them at your convenience as R. O. has asked me to do. There are several statements and impressions about my firm—that R. O. has heard—that deserve correction.

R. O. has asked me to "go along" and I have given no answer. I have only promised fair consideration of whatever may be offered to us. So far as I can see now, any action will be based on the facts as they appear at the time but I must be clear that the present situation appears thoroughly unsatisfactory.

Yours,

JOHN M. HANCOCK.

jmh-mf
Cc To Mr. R. O. Kennedy
Mr. E. H. Cluett
Mr. George A. Cluett

EXHIBIT No. 1815

[From the files of Lehman Brothers]

COPY OF LETTER TO MR. SANFORD L. CLUETT, TROY, NEW YORK

WILLIAMSTOWN, MASS., *May 13, 1937.*

DEAR SANFORD: I hesitated for some time the other day before calling you on the telephone regarding the proposed new financing and I did so finally only because Mr. John Hancock of Lehman Brothers had urged me to do so. Since my retirement from business some ten years ago, I have endeavored scrupulously to avoid offering advice or making suggestions to those who are now directing the affairs of the company. In this particular instance, I thought best to call you, as it often happens that the active directors of a company are not familiar with arrangements or commitments entered into by their predecessors.

At the time the present company was organized through the joint efforts of Lehman Brothers and Goldman, Sachs and Co., a representative of each banking firm was elected to the board. It was clearly understood at the time that each firm would have a voice in the financial affairs of the company and that any new financing that the company might be called upon to do in the future would be handled by both firms.

Shortly after the Armistice, when our company was carrying huge inventories and owing something over eleven million dollars, it was necessary to get our bankers to intercede in our behalf with certain New York banks. Mr. Gillespie and I spent a great deal of time in New York endeavoring to establish new lines of credit and we were turned down by almost every bank we appealed to. One bank, the Hanover, more than met our request and several others came to the rescue only after appeals from Mr. Catching and Mr. Philip Lehman. The latter put up a great fight for us and finally secured the funds that we required. At another time, Mr. Lehman bought outright ten thousand shares of our unissued preferred stock in order to provide the company with needed funds. At another time, when Mr. Peabody sold a large block of his

stock to Lehman Brothers, Mr. Lehman voluntarily turned over to those of us who were in a trading agreement with him one half the profit made through the sale of this stock. There are many other instances that I could enumerate showing the fine service we have had from Lehman Brothers in the past, but I cannot see that anything would be gained by it at this time.

My only concern is over the fact that our company is starting out on new and untried paths with little if any regard for old commitments. The company has had a wonderful record for fair and honorable dealing over a long period of years and it is very disquieting to see that record tarnished.

Affectionately,

Signed by: G. A. CLUETT.

Mr. SANFORD CLUETT,
Troy, New York.
GAC:DD

EXHIBIT No. 1816

[From the files of Lehman Brothers]

GEORGE ALFRED CLUETT,
Williamstown, Mass., May 24, 1937.

Mr. JOHN HANCOCK,
New York City.

DEAR MR. HANCOCK: Thank you for your letter of May 19 enclosing copy of a letter from you to Mr. C. R. Palmer. I am quite in accord with the position you have taken and I regret very much that Cluett Peabody and Co. has taken the action that it has.

I enclose for your confidential information copy of a letter I wrote to Mr. Sanford L. Cluett, setting forth my own position in regard to the proposed new financing of the company. This letter followed a telephone conversation in which I urged that Lehman Brothers be given exactly the same treatment as it was proposed to give Goldman Sachs.

I also enclose a letter to me from Mr. Sanford L. Cluett for your confidential information and which I will ask you please to return to me.

As I have been out of business for ten years, I would not think of offering advice or giving an opinion as regards the new financing. My only concern is to have the company live up to its commitments as it has always done in the past and to have it maintain an unblemished record for fair dealing.

With my kind regards, I am,

Sincerely yours,

G. A. CLUETT.

GAC:DD
Encl: 3

EXHIBIT No. 1817

[From the files of Goldman, Sachs & Co.]

JUNE 30, 1938.

In connection with business which may eventuate for the companies designated on the attached list or their successors:

(1) Whenever the first house is to receive more than fifty percent of the management fee, it shall conduct the negotiations, act as the sole representative of the underwriters, have full authority to agree on terms, have charge of the registration and syndication, and its name shall appear first in all syndicate papers and advertisements. The first house shall advise the second house of the progress of the business. The second house is to have an opportunity to collaborate in matters relating to registration to an extent commensurate with its responsibilities. Subject to paragraph (3), the second house, if it wishes, shall have an underwriting participation up to that of any other participant, including the first house, and a proportionate selling group participation, shall appear as the joint syndicate manager in all papers and publicity as released by the first house, shall appear in the second position in all advertisements, the two names to be the only names appearing on the first line, except in unusual

circumstances, and the management compensation shall be divided in accordance with the percentages indicated.

(2) Whenever the management fee is to be equally divided between the two houses, then in addition to the above, the two houses are to appear and sign all papers as joint representatives of the underwriters, and the first house will consult with the second house to an extent consistent with the best interests of the business in the judgment of the first house and the first house will also consult with the second house as to the progress of the business.

(3) The inclusion of the second house in a particular piece of business, and if included, its position in such business, is subject to acquiescence on the part of the Company involved and subject to pre-existing rights of any other house. Both houses are to use their best efforts so that the basis of mutual participation may be as set forth above. However, to the extent that such arrangements may not be acceptable to the Company involved the first house may proceed with the particular business independently of the second house.

(4) These arrangements may be terminated by either house at any time after January 1, 1939 upon three months' written notice to the other house.

Signed GOLDMAN SACHS & Co.
By W. E. S.
LEHMAN BROS.
By W. J. H.

G. S. & CO.—FIRST HOUSE

LEHMAN BROS.—FIRST HOUSE

100% OF MANAGEMENT COMPEN-
SATION

Archer Daniels
Brown Shoe
Cluett
Continental Can
Eudicott
Goodrich
Kelsey
Kuppenheimer
Long Bell
Manhattan Shirt
Munsingwear
National Dairy
Pet Milk
Pillsbury
Franklin Simon

100% OF MANAGEMENT COMPEN-
SATION

Brunswick
Amalgamated Leather
Am. L & Traction & Subsidiaries
Anglo-Chilean
Bing
Macy
Spear
Underwood Typewriter
Yellow Cab
National Enameling

G. S. & CO.—FIRST HOUSE

75% OF MANAGEMENT COMPENSATION

Sears Roebuck
Lehn & Fink

Merek
Van Raalte

G. S. & CO.—FIRST HOUSE

LEHMAN BROS.—FIRST HOUSE

50% OF MANAGEMENT COMPEN-
SATION

General Foods
General Cigars
May

50% OF MANAGEMENT COMPEN-
SATION

American Metal
Woolworth
Jewel
Gimbel
Studebaker
Phoenix
Kress

EXHIBIT NO. 1818

[From the Registration Statement under the Securities Act of 1933 on File with the Securities and Exchange Commission]

EXTRACT FROM THE PROSPECTUS OF THE CLEVELAND CLIFFS IRON COMPANY IN CONNECTION WITH FIRST MORTGAGE SINKING FUND 4- $\frac{3}{4}$ % BONDS DUE NOVEMBER 1, 1950, PRINCIPAL AMOUNT \$16,500,000 OFFERED IN DECEMBER 1935

USE OF PROCEEDS

The entire net proceeds to be received by the Company from the sale of the Bonds being offered by this Prospectus, estimated in the amount of \$15,921,060, are to be used, together with \$5,000,000 to be obtained from the proceeds of the 4 $\frac{3}{4}$ % Collateral Loans referred to under the headings "Additional Information" and "Capitalization" below \$1,128,225 obtained by way of a dividend on the shares of capital stock of Lake Superior and Ishpeming Railroad Company owned by The Cleveland-Cliffs Iron Company and other funds obtained from the sale of securities owned by the Company to retire the outstanding 6% Notes of the Company due January 23, 1936, also referred to below, in the aggregate principal amount of \$22,116,379.44 (said amount having been reduced from \$23,966,571.59 since September 30, 1935). These Notes represent renewals or replacements of bank loans incurred in 1930 and 1931 and renewed or replaced from time to time thereafter for periods of not exceeding one year. Said Notes are held by the following creditors:

<i>Name and Address</i>	<i>Amount</i>
The Union Trust Company, Cleveland, Ohio.....	\$5,700,188.98
The Cleveland Trust Company, Cleveland, Ohio.....	2,145,100.00
Central United National Bank of Cleveland, Cleveland, Ohio.....	408,500.00
Continental Illinois National Bank & Trust Co. of Chicago, Illinois.....	2,929,500.00
The First National Bank of Chicago, Chicago, Ill.....	2,235,440.46
Bankers Trust Company, New York, N. Y.....	3,348,000.00
Bank of the Manhattan Company, New York, N. Y.....	3,880,000.00
The Cliffs Corporation, Cleveland, Ohio.....	665,000.00
Lake Superior and Ishpeming Railroad Company, Cleveland, Ohio.....	522,500.00
William G. Mather, Cleveland, Ohio.....	281,150.00

EXHIBIT NO. 1819

[From The Files of Bankers Trust Company]

JANUARY 30, 1935.

BANKERS TRUST COMPANY,
16 Wall Street, New York, N. Y.

GENTLEMEN: The Cleveland-Cliffs Iron Company, an Ohio corporation, having its principal office at Cleveland, Ohio, is engaged principally in mining, shipping and marketing iron ore from its iron ore mines in the upper peninsula of Michigan and elsewhere on the iron ranges of the Lake Superior district.

The Cliffs Corporation, an Ohio corporation, having its principal office at Cleveland, Ohio, is engaged principally in the business of holding stocks for investment purposes and is the owner of all the common stock of the Cleveland-Cliffs Iron Company and large blocks of stocks of companies engaged in the manufacture of steel, which are also consumers of iron ore.

The Cleveland-Cliffs Iron Company has outstanding current secured indebtedness aggregating approximately twenty-five million two hundred thousand dollars (\$25,200,000) which is held chiefly by a group of eight (8) creditor banks. All of said indebtedness is secured by a collateral trust indenture (entitled "Extension Indenture"), executed by The Cleveland-Cliffs Iron Company to The Union Trust Company, as Trustee, dated January 23, 1933 (The Union Trust Company having since been succeeded by The Cleveland Trust Company, as Trustee) and supplements to said indenture and certain of said indebtedness is primarily secured by other instruments of pledge referred to in said Extension Agreement Indenture. Under a Supplemental Agreement

dated January 23, 1935, said indebtedness has been extended until July 23, 1935 upon the same terms and with the same force and effect in all respects as are set forth in said original Extension Indenture, with provision for a further extension for a period of five (5) years upon the terms and conditions set forth in said Supplemental Agreement.

The Cleveland-Cliffs Iron Company contemplates negotiations by which The Cliffs Corporation will be merged or consolidated with The Cleveland-Cliffs Iron Company and the merged or consolidated company will own and hold all of the property, assets and business of both companies, and will be liable for the payment of all the debts and liabilities and the performance of all the obligations of both companies.

The Cleveland-Cliffs Iron Company upon consummation of said merger or consolidation, and as a part thereof, proposes to create an issue of twenty-four million dollars (\$24,000,000) principal amount of First Mortgage and Collateral Trust Fifteen-Year Serial Bonds (hereinafter sometimes called the "bonds") of the kind and character hereinafter described; and subject to the conditions set forth below, and upon your acceptance hereof, hereby constitutes and appoints you its sole agent for the purpose of procuring a syndicate or group of responsible investors (hereinafter called the "Underwriters") who will, prior to the consummation of said merger or consolidation, and subject thereto, purchase or agree to underwrite the sale of all of said issue of bonds at their principal amount and accrued interest.

The conditions of your appointment as Agent hereunder are as follows:

1. The merger or consolidation of The Cleveland-Cliffs Iron Company and The Cliffs Corporation referred to above shall be effected under the laws of the State of Ohio by a sale of assets and liquidation or by merger or consolidation proceedings, to the end that all of the properties and assets of each of said corporations shall be vested in the resulting or continuing corporation, which shall assume and be liable for all of the debts and obligations of each of said corporations, such sale, merger or consolidation to be effected on terms satisfactory to the stockholders of each of said corporations.

2. The First Mortgage and Collateral Trust Fifteen-Year Serial Bonds shall be of an authorized principal amount of twenty-four million dollars (\$24,000,000); shall be dated as of the first day of the calendar month in which the merger or consolidation above referred to is consummated; shall mature fifteen (15) years thereafter; shall be payable in lawful currency of the United States of America; shall bear interest at the rate of five per cent. (5%) per annum, payable in like currency semi-annually; shall mature serially as set forth on Schedule "A" attached hereto and made a part hereof; shall be issued under an indenture of mortgage to Bankers Trust Company, as Trustee; shall be redeemable as set forth on Schedule "B" attached hereto and made a part hereof; shall constitute a first mortgage lien upon the physical properties and leasehold interests of the merged or consolidated company and a first lien upon the securities of the merged or consolidated company presently pledged under the Extension Indenture *and the securities acquired by virtue of said merger or consolidation.*¹ The indenture shall contain appropriate provisions for the sale or other disposition of physical properties which are not essential to the regular conduct and operation of the company's business and the application of the proceeds of such sales either for replacement purposes, if so required, or for the retirement of bonds. The indenture will also contain appropriate provisions permitting the sale of collateral for use in meeting serial maturities or otherwise retiring the bonds. The indenture will also contain such other customary and usual provisions as shall be agreed upon between you and ourselves.

3. We will, upon your written request, cause the bonds to be fully registered under the Securities Act of 1933 and upon similar request will make application to list the same upon the New York Stock Exchange and we will cooperate with you in the preparation of prospectuses, sales literature or such other information as is customarily required in connection with the sale of securities and the qualification of the same under various Blue Sky Laws. It is understood between us that the question of listing the other securities of the merged or consolidated company upon a stock exchange or exchanges will be a matter for further discussion between us.

4. We will furnish satisfactory evidence showing that the merged or consolidated company has a good and merchantable title to substantially all of

¹ Italics in hand writing.

the real estate owned by The Cleveland-Cliffs Iron Company, which evidence shall consist of opinions of counsel experienced in the law of the states where such real estate is located, based upon an examination of abstracts of title brought down to date.

5. All legal proceedings in connection with the merger or consolidation or sale of assets above referred to; the creation, issuance and sale of the bonds; the execution and delivery of the indenture securing the same; the registration and qualification of the bonds; the validity of titles to properties [see 4 above] and all other proceedings in connection with the transaction herein contemplated shall be subject to the approval of your counsel.

6. All expenses in connection with the merger or consolidation, the creation, issuance and sale of the bonds, the execution, delivery and recording of the indenture securing the same, and the registration and qualification of the bonds, including, without limiting the foregoing, printing, preparation of securities, stamp taxes, recording fees, qualification expenses, accounting expenses, counsel fees and all other expenses in connection with the transactions herein contemplated shall be borne by the merged or consolidated company.

7. You are to use your best efforts to secure a group or syndicate of investors who will purchase the entire issue of said bonds as above stated, or who will enter into an underwriting agreement in form acceptable to us for the purchase of the entire issue of said bonds. You shall not be liable under any conditions for your failure to secure the group or syndicate referred to above or for the purchase yourselves or for the underwriting of all or any part of said bonds, although you may, if you so desire, purchase such amount of said bonds as may be arranged between you and the Underwriters. Upon the purchase by said group or syndicate of the entire issue of said bonds or upon the sale of said entire issue of bonds under said underwriting agreement, we agree to pay you for your services hereunder, in cash, a fee of one per cent. (1%) of the entire principal amount of said bonds. In the event for any reason the proposed merger or consolidation above referred to shall not be brought about or said purchase or sale of such bonds shall not be effected, we will reimburse you for all your expenses, including counsel fees, incurred in connection with carrying out this agreement on your part.

8. If the purchase of the entire issue of said bonds or the execution of said underwriting agreement as hereinabove provided is not consummated by September 1, 1935, either party hereto may cancel this agency agreement and all obligations thereunder (except our obligation to pay your expenses as in the preceding section provided) upon giving five (5) days' written notice of such intention to the other.

This letter is written in duplicate and, if agreeable to you, you will please sign the acceptance clause on both copies and return one signed copy to us.

Yours truly,

Subject to approval of the Board of Directors.

THE CLEVELAND-CLIFFS IRON COMPANY
By E. B. GREENE, *President*.

Accepted and agreed to this 30th day of January, 1935.

BANKERS TRUST COMPANY,

By B. A. TOMPKINS,

Vice President.

EXHIBIT No. 1S20

[From the files of Cleveland-Cliffs Iron Company]

THE CLEVELAND-CLIFFS IRON CO.

INTER OFFICE LETTER

Subject:

Reference:

CLEVELAND, OHIO, June 23, 1935.

BRIEF SUMMARY OF NEGOTIATIONS WITH BANKERS TRUST COMPANY, REPRESENTED THROUGHOUT BY MR. B. A. TOMPKINS, AND AT TIMES BY DANA KELLY AND MR. GRAHAM, AND ALSO LEHMAN BROTHERS REPRESENTED BY MR. GUTMAN AND MR. SZOLD

About the middle of January both Mr. Keidel and Mr. Ardrey asked the writer if he would be interested in funding the bank indebtedness which then

amounted to over \$25,000,000, by creating a long-time bond issue. The writer replied that he would. They then said the Analysis Department had worked on the plan, having in mind an issue of bonds equal to the bank loan, of which the present bank creditors would take the first \$5,000,000 or \$6,000,000 and the balance of the issue would be sold wholesale to life insurance companies or investment trusts. They stated that if I were interested I should see Mr. B. A. Tompkins Vice President of the Bankers Trust Company in charge of their Bond Department.

The writer was then calling on our bank creditors trying to find a common ground for a five-year extension of the bank loan. He therefore said that he felt that any negotiations for the funding should be undertaken only after the five-year extension was secured from the banks, if that were possible, and said that as soon as the bank extension had been granted he would return and discuss the matter with Mr. Tompkins. As the writer recalls it, the bankers, on the 24th of January, gave the company a six months' extension in which to bring about a merger of Cleveland Cliffs Iron Company and Cliffs Corporation, and if this merger were effected the Cleveland Cliffs Iron Company was to receive a five-year extension, the rate of interest being 5% the first year, 5½% the second year, and 6% thereafter, the interest being arranged in this order to make it an added incentive for the company to fund its debt.

A few days after the extension was granted the writer returned to New York and took the matter up with Mr. Tompkins and his associates. After several days of negotiations it was agreed that the writer would return and recommend a bond issue amounting to not more than \$25,000,000, bearing interest at 5%, to be sold at par, the Bankers Trust Company to receive 1% commission for acting as our agent. The issue was to be serial, maturities and call price all being in accordance with a contract dated January 31st executed by the writer, subject to the approval of the Board of Directors of the Cleveland Cliffs Iron Company, and accepted for the Bankers Trust Company by Mr. Tompkins. At the time this contract was drawn the writer assumed that he would take it to Cleveland and submit it to the Board and execute it only after approval by the Board. Mr. Tompkins objected to this procedure and wanted the writer to sign it at this time. I explained to him that I had no authority to do so and that my signature would not be binding on the company and would only be a matter of good faith on my part to exert my best efforts to secure the approval of the Board. Mr. Tompkins stated this was entirely agreeable to him and wanted it signed with that understanding. After some further protest the writer signed the instrument but wrote in above his signature "Subject to the approval of the Board of Directors."

A few days later the writer returned to Cleveland and was very shortly asked to join officials of Republic Steel and Corrigan McKinney in going to Washington. On February 7th while in Washington we learned of the bringing of the suit by the Department of Justice to enjoin the merger of Republic and Corrigan McKinney, in which suit the Cleveland Cliffs Iron Company was named one of the defendants. Our counsel, Mr. Belden, at once advised the writer that until the case was tried we should have no negotiations looking toward the merger. Consequently, the matter would be delayed until after the trial.

After the announcement of the litigation, the writer returned to New York and discussed the suit with Mr. Tompkins and he agreed that the litigation was not vital to the funding and would not interfere with it. After the writer's return to Cleveland he reported this to Osear L. Cox, Harris Creech, W. P. Belden, and Wm. G. Mather.

Judge Raymond rendered his decision on May 3rd which was a complete victory for the defendants. Shortly after this Mr. Tompkins and Mr. Gutman both got in touch with the undersigned and desired to renew discussions regarding the financing. The writer submitted the matter to Mr. Belden, and after consulting with the steel companies he advised the writer that there was no harm in negotiating with the investment houses or stockholders, but that he wanted no formal steps to be taken in the matter pending an effort on the part of the attorneys for the steel company to secure a promise on the part of the Department of Justice not to appeal their case.

During May the writer had a number of conferences with the Bankers Trust Company, Lehman Brothers, and Hayden Stone with reference to this financing, as a result of which a number of changes were made in the proposed plan both as to changing the bond to a sinking fund rather than a serial issue, rearranging the call prices, and considering an alternative rate of 4½% rather than a 5% issue as originally agreed upon, and other matters connected with the issue.

About the middle of June both Mr. Tompkins and Mr. Gutman showed great interest in the legal status with reference to the Republic-Corrigan McKinney merger. Therefore the writer made an appointment with the Bankers Trust Company and Lehmann Brothers to meet with Mr. Belden and himself and discuss these matters. At this meeting the writer was informed that the investment houses had some doubt in their minds as to the wisdom of bringing out an issue for retail sale to the public, of a company which was a defendant in a suit brought by the government notwithstanding their confidence in the final outcome of the litigation. They stated that the uninformed investor would be puzzled by the matter and there would be increased sales resistance. The only other way to obviate it would be to hold the issue on their shelves until the final termination of the litigation. The writer called their attention to the fact that Tompkins and he had discussed this in February following the bringing of the suit, and that it was agreed by both that the litigation was not of vital importance to Cleveland Cliffs Iron and that the funding would not be predicated on the favorable disposal of the litigation prior to the offering of the bonds. Mr. Tompkins did not contradict this statement although he inferred there might be some misunderstanding on his part with reference to that. The writer has since made this statement emphatically before the Lehman Brothers representatives and Mr. Tompkins since the first time has never taken any different point of view. They indicated that if the suit stood when the bonds were ready to be sold that they would have to adjust the price downwards to meet the sales resistance. The writer stated that this was not satisfactory and he did not think it was in compliance with the terms of the informal contract between Mr. Tompkins and himself. The writer then demanded that they decide whether or not the Republic-Corrigan McKinney merger was a sine quo non of their carrying out of the informal contract. Mr. Tompkins stated frankly he did not want to pass on that but wanted to wait the outcome. The writer objected to this. Mr. Gutman then suggested that the merger of Cleveland Cliffs and Cliffs Corporation be undertaken based on the five-year bank extension, with the assurance that they were glad to go ahead when the suit was favorably disposed of, and that the funding would then replace the five-year extension. The writer replied that this could undoubtedly have been accomplished in January or February, but the funding having been discussed with the creditor banks and large stockholders, it would be very difficult to go back to a less advantageous plan especially to secure the approval to the merger of those stockholders of Cliffs Corporation who had no Cleveland Cliffs Iron preferred. It was argued that with whatever contact we had with Washington it might be easier to secure their approval of a Cleveland Cliffs-Cliffs Corporation merger based on a five-year extension than on a Wall Street funding operation.

After considerable argument the writer agreed to return and see our largest Cliffs Corporation stockholder not interested in the preferred stock, namely, Mr. Wachner, Receiver for Continental Shares. The writer found Mr. Wachner was away and would not return until the 20th of June, and was fortunate in seeing him as soon as he returned to the city. Mr. Belden was also present at our conference. The writer endeavored to secure Mr. Wachner's approval on behalf of Continental Shares' holding in Cliffs Corporation to the merger based on the five-year bank extension and met with considerable resistance. Continuing to press the matter the writer was surprised to have Mr. Belden support Mr. Wachner's point of view. Later on in discussing the matter with Mr. Belden and expressing surprise at Mr. Belden's attitude, the latter said that he felt that any further pressure put on Mr. Wachner to secure his approval based on the five-year extension, was bound to be unsuccessful and might even prevent our securing his approval of the merger based on the funding. He said that as he watched the discussion he became alarmed and felt it was necessary to indicate to me not to make any further efforts. It was evident that Mr. Wachner was not as favorable to the merger under any circumstances as he had been in our conferences held a month or so previous.

The writer has had many conferences with Mr. Belden, Mr. Wm. G. Mather, and two or three of our bank creditors including E. E. Brown, O. L. Cox, and Harris Creech, and all concurred in the writer's view that there was only one thing to do and that was to return promptly to New York, make an appointment with the Bankers Trust Company and Lehman Brothers and advise them that a merger based on the five-year extension was out of the question, and that it was necessary for the Bankers Trust Company and Lehman Brothers to decide whether they wanted to take the issue irrespective of the Republic-Corrigan McKinney litigation or whether they preferred to

have the contract lapse, as, if the present market conditions changed and no effort was made to avail ourselves of the present easy money and the market for securities, that it would seem to indicate negligence on the part of the Cleveland Cliffs management. Consequently, the writer made an appointment with Mr. Tompkins, Mr. Gutman and Mr. Szold and met with them on June 27th in Mr. Tompkins' office. The writer presented the matter first to Mr. Tompkins and again in the same terms to the three men.

E. B. GREENE.

EBG JS

EXHIBIT No. 1821 appears in full in the text, p. 12428.

EXHIBIT No. 1822

[From the files of Cleveland-Cliffs Iron Co.]

(Stamped :) CONFIDENTIAL.

JULY 5, 1935.

MR. W. P. BELDEN,
Richford, Tioga County, New York.

DEAR WILLIAM PATCH: I enclose copy of a letter just received from Tommy Tompkins. I slightly changed your letter to him calling his attention to the fact that the informal contract required him to take the bonds at a point off a 5% basis unless the general market condition had meanwhile changed. You will note in his reply that he has ignored this portion of the letter but he does concede our point that we should have a voice in settling the price if it is changed.

I think we can sum up the difference between my point of view and Tompkins' as follows, that I claim the price is fixed unless the general bond market changes, while he claims the price is fixed unless conditions, say this suit or any other matter that pertains to this company, make it impossible or even difficult for them to sell this particular bond on that basis. If the necessary spread to pay the offering houses would put the price of the bond too high to sell it they then think the price of a 5% bond should be lowered to say 97 less 1%, which would give them four points for profit to the issuing houses.

I would suggest that you give this matter careful thought, and also the following situation. At the Cliffs Corporation meeting this morning, Wachner and White being present, Mr. Eaton made a long speech on the financing, questioning me carefully for maybe half an hour. The points he made were, first, that he thought the price was too high, second, he thought that it might be possible to sell the issue on the assets of Cleveland Cliffs Iron alone without the Cliffs Corporation, and third, he was not sure that Cliffs Corporation was getting enough. In the end he seemed to be partially convinced that the deal was fair for Cliffs Corporation, but he still felt that we should make an effort to finance Cleveland Cliffs Iron on its own. My observation, which is concurred in by both Mr. Mather and Mr. Goffine, with whom I have talked, was that Eaton was actuated by a desire to hold up the deal by influencing Wachner and White against it and then have us take steps to see that he is taken care of in the deal with the understanding that he withdraw his objections and possibly help us to convince Wachner and White. In other words, he wants to put a monkey wrench in the machinery to either get a new deal in which he would be a participant or to have one of the participants offer him part of their share with the tacit understanding that he secure the approval of the companies in which he was formerly so much interested, namely, Continental Shares and Commonwealth Securities. Had his motive been entirely sincere I think he would have talked with Mr. Mather and me outside of the directors meeting. I called him in my room afterwards and asked him to give me the benefit of his suggestions how we could finance on better terms. He did not seem to have any ideas or could he recommend any house he knew of that could finance us on better terms. While he himself had no ideas, Burwell remained after the Cleveland Cliffs Iron meeting this afternoon. He referred to Cyrus' views expressed at the morning meeting, asked for some comparative figures, and said he was going to write me and give me his views. This is just another complication to a situation already difficult and badly mixed up.

It is my plan now to go to New York next Tuesday or Wednesday night. I am inclined to feel you should be there, at least one day. Maybe I could go

down and get it started and send for you, but preferably I would like to go over the matter with you before I see the others.

I do not know whether I have told you or not, but Steele Mitchell is prepared to recommend something entirely new. I have rather kept away from it feeling that each new move would bring new difficulties.

I am more than ever convinced that 'Tompkins' idea is to string this along, writing indefinite letters, trying to get us up to August 12th without reaching any decision. Maybe I am wrong, but that is the idea that sticks in my suspicious mind.

I suggest that after you have read this letter you call me up, reversing the charges, as I would like to get your views.

Sincerely yours,

EBG JS

EXHIBIT No. 1823

[From the files of Cleveland-Cliffs Iron Company]

JUNE 13, 1935.

Memorandum:

Being in New York to attend another directors meeting, I was given an appointment at luncheon by Mr. Tompkins. The meeting was held in the private dining room on the top floor at the Bankers Trust Company yesterday. There were present: B. A. Tompkins, Dana Kelley, and Mr. Graham of the Bankers Trust Company, and the undersigned.

After preliminaries, Mr. Tompkins asked whether I had received his letter and whether it was satisfactory. I told him it was a very nicely written letter but that it did not answer my question whether or not they intended to take a firm stand that the Republic-Corrigan McKinney merger was a condition of our refunding; that it was my firm conviction that Mr. Tompkins and I had specifically discussed this in February after the suit was brought, and that it was agreed by both of us at that time that the merger of Republic and Corrigan was not a necessary factor in their deal and that they would proceed with the financing independent of that. However, I reported then (in February) that our counsel did not wish us to take any steps in our refunding which would either bring about publicity or necessitate our reporting or applying to Washington until the suit was concluded. The writer briefly outlined the events of the past few months, dwelling on the events following the end of the suit.

Mr. Tompkins reported that at a meeting at which representatives of the following firms were present, Bankers Trust Company, Lehmann Brothers, Kuhn Loeb, Field Glorie, and Hayden Stone, that the matter was discussed in detail and that they felt it in the interests of both Cleveland Cliffs and their group that the matter should be delayed with the idea of finding out whether or not the government would appeal, and if they did appeal, to delay until the suit was disposed of by the Supreme Court. He stated they had not taken a firm action but had recommended this. He stated further he felt the bonds would not be as valuable with the suit not disposed of as with it out of the way.

He desired the writer to take further steps to ascertain whether the merger could not be effected on the basis of the five-year bank extension and as soon as the suit were settled, or if in the mean time the investment houses felt the matter was of less importance, they would then immediately take up the financing. The writer replied that his first step was to see the biggest stockholder of Cliffs Corporation as well as the biggest interest not holding a corresponding investment in Cleveland Cliffs Iron, and that this was Mr. Wachner, Receiver for Continental Shares, and that Mr. Wachner would be away on a vacation until the 19th or 20th of June, and he had therefore not been able to ascertain Mr. Wachner's attitude. He stated he had had one talk with Messrs. White and Miller representing Commonwealth Securities, and these people did not want to commit themselves and were in favor of delay. It was left that the writer would see Mr. Wachner as soon as he returned and that if Mr. Wachner would entertain the thought of the merger based on the five-year bank extension, the writer would see one or two others and then discuss the matter again with Mr. Tompkins alone or with Mr. Tompkins and some of his group.

Mr. Tompkins then went on to relate that at this meeting a suggestion was made that the four banking firms should all come in on the financing on an

equal basis, or 25% each, and that Lehmann Bros. be asked to head up the group. The writer then informed Mr. Tompkins that the original deal was to sell the bonds to the purchasers or underwriters at par, paying the Bankers Trust Company 1% commission, the bonds to be 5%. The present tentative arrangement is for the bonds to be 4½%, the syndicate to buy them on a 5% basis, and the commission of 1% to be paid in addition. The writer then advised Mr. Tompkins that we might want to return to the 5% basis which would be less of a discount to pay at this time. Mr. Tompkins advised the writer against this as he believed that it would make it a little more difficult to dispose of the bonds at the premium necessary to interest the selling group. The writer did not regard the matter as definitely disposed of.

Mr. Tompkins then went on to state that they had discussed the matter of the 1% commission and had agreed on this arrangement: that the Bankers Trust Company would keep ½% for themselves out of which they would pay White & Case's bill up to the present time and also White & Case or any other firm who did the legal work drawing the issue and protecting the interests of the Bankers Trust Company as trustee of the bond issue. He stated that the other ½% would be paid to Lehmann Bros. for their assuming the leadership of the purchasing group. He stated however, that they had made an agreement that out of Lehmann Bros.' ½% they would pay whatever legal expenses the group required in the matter, and the expense, if any, in securing engineers' or geologists' reports, any auditing expense required by the purchasing group, printing of the bonds, etc. He also stated that all these expenses were customarily levied on the borrowing company. It is the writer's impression that at the close of the meeting he expressed the feeling that Kuhn Loeb and possibly Field Glore would regard the Republic-Corrigan merger as very essential as they put more importance on it than the others in the Cleveland Cliffs Iron picture.

As stated above, it was left that the writer would test out the feeling of certain Cliffs Corporation stockholders with the idea of ascertaining whether the company should endeavor at the earliest opportunity to effect the merger based on the five-year bank extension.

E. B. GREENE.

EBG JS

"EXHIBIT No. 1824" appears in full in the text, p. 12462.

EXHIBIT No. 1825

[From the files of Bankers Trust Company]

Cable address: Whitecase, N. Y.

Paris: 3, Place Vendome
Cable address: Whitca, Paris

WHITE & CASE,

14 Wall Street, New York, January 30, 1935.

GJ/WS

Re The Cleveland-Cliffs Iron Company.

BANKERS TRUST COMPANY,
16 Wall Street, New York City.

Attention of Mr. B. A. Tompkins, Vice President.

GENTLEMEN: Enclosed herewith are several final copies of the proposed letter of appointment of Bankers Trust Company as Agent for the Cleveland-Cliffs Iron Company in the matter of financing the proposed merger of the Company and The Cliffs Corporation.

We have examined the enclosed letter of appointment on your behalf and write to advise you that, in our opinion, the same is in satisfactory form and sufficient for the purposes indicated.

Very truly yours,

WHITE & CASE.

Enclosures.

EXHIBIT No. 1826

[From the files of Bankers Trust Company]

WM. G. MATHER, *Chairman of Board*
E. B. GREENE, *President*
A. C. BROWN, *Vice President*
S. L. MATHER, *Vice President*

V. P. GEFINE, *Vice Pres. & Secy.*
C. G. HEER, *Treasurer*
E. H. JAYNES, *Ass't Secretary*

THE CLEVELAND-CLIFFS IRON CO.

Offices 14th Floor Union Trust Building

CLEVELAND, OHIO, *February 1, 1935.*

Personal

Mr. B. A. TOMPKINS,
V. P., *Bankers Trust Company,*
New York City

DEAR TOMMY: On my roundabout trip back to Cleveland I had a chance to read and study the informal contract which you executed and which the writer executed, subject to the approval of the Board of Directors.

We both understand that this is an appointment of the Bankers Trust Company as agent to buy or underwrite a first mortgage and collateral issue of bonds, the obligor being the corporation to be created by merger or sale of the Cleveland-Cliffs Iron Company and the Cliffs Corporation. It is obvious that since the corporation which is to issue these bonds may be a new corporation formed through the merger of the Cleveland-Cliffs Iron Company and Cliffs Corporation, it can not make a firm commitment until that merger is consummated. It is eminently fair therefore, that the Bankers Trust Company at this time should not be required to make a firm commitment either. However, before the stockholders meetings of the Cliffs Corporation and Cleveland-Cliffs Iron Company are held, at which the stockholders of these companies will be asked to ratify the merger and to authorize the bond issue, a firm commitment should be in the hands of the Cleveland-Cliffs Iron Company. It is the writer's understanding that this situation is fully understood by you and that you, in fact, have advised the writer that such a commitment will be made as soon as the purchasing group is formed by you.

The writer feels that the Cleveland-Cliffs Iron Company and the Bankers Trust Company should keep each other fully informed as to the progress in this matter. It is the writer's intention to submit the matter to the Board of Directors in the course of a few days, after which he will come to New York and hopes to be advised by you that you have been successful in forming your syndicate. Thereafter the officers of this company and their counsel will prepare the necessary papers in connection with the merger and by personal interview endeavor to secure the approval and support of the larger interests in both companies to our plan.

Would you kindly indicate whether or not this program meets with you approval, as well as confirm the writer's understanding as to the commitment.

Very truly yours,

E. B. GREENE, *President.*

EBG JS

EXHIBIT No. 1827

[From the files of Bankers Trust Company. Letter from B. A. Tompkins to Edward Greene]

FEBRUARY 4, 1935.

Mr. EDWARD GREENE,
Cleveland-Cliffs Iron Co., Cleveland, Ohio.

DEAR ED: I have just had your letter of the first. I think that it fairly sets forth our understanding, with this exception. Under the law Bankers Trust Company is prohibited from underwriting. We can, however, act as your agent on a commission basis to find underwriters for the issue. Having done so

we are privileged to "purchase for investment" such amount of bonds as agreed upon between ourselves and the underwriters.

I could do nothing in the way of securing additional underwriters until the Hayden Stone matter (covered in my letter to you of the 2nd) was cleared up. I can now proceed and there is plenty of time between now and your stockholders meeting. I realize, of course, that a company still informed cannot make a commitment. You and I, however, have the facts before us and have a gentlemen's agreement to try to get the job done. I think you are in a position now to talk to the larger interests in both companies and advise them of your agreement with us.

I expect to go south on Tuesday night for a week or so. In the meantime you can get your Board together and ratify the agreement. I'll be only a night's trip from New York and can be here any morning.

As ever yours,

BAT:B

EXHIBIT No. 1828

[From the files of Bankers Trust Company]

WM. G. MATHER, *Chairman of Board*
E. B. GREENE, *President*
A. C. BROWN, *Vice President*
S. L. MATHER, *Vice President*

V. P. GEFINE, *Vice Pres. & Secy.*
C. G. HEER, *Treasurer*
E. H. JAYNES, *Asst Secretary*

THE CLEVELAND-CLIFFS IRON CO.

Offices 14th Floor Union Trust Building

CLEVELAND, OHIO, May 25, 1935.

MR. B. A. TOMPKINS,
V. P., *Bankers Trust Company,*
New York City.

DEAR TOMMY: I was very glad that at the beginning of our conference on Wednesday Mr. Gutman and you frankly discussed the relationship which the writer personally and the Cleveland Cliffs Iron Company bear to the Bankers Trust Company regarding our refinancing. I had it in my mind to bring up the matter and had I done so I would have brought out the two points that you expressed so well:

First, that the informal contract appoints the Bankers Trust Company the agent of the Cleveland Cliffs Iron Company to secure the refinancing of our present bank obligations of \$24,000,000 at such rate of interest and terms as favorable as possible to the Cleveland Cliffs Iron Company, and at the same time to provide an issue of bonds which it is possible to dispose of under present market conditions;

Second, that the Bankers Trust Company are willing to include as equal partners in the deal, two or three firms whose participation would be of advantage to the Cleveland Cliffs Iron Company to have tied into our picture.

I think these two statements entirely cover the situation. The writer has referred to the contract as informal. I am doing this inasmuch as when I signed it in your office on January 30th I explained that I had not been authorized by either the Board of Directors or the Executive Committee to execute such a contract and consequently it was only a matter of good faith on my part. With this understanding the writer executed the contract, writing in above his signature "subject to the approval of the Board of Directors". I am not commenting on this as a matter of particular importance, as in reality I am more influenced by my long friendship for the Bankers Trust Company and my friendship for you, Louie Keidel, and Alex Ardrey. Personally, I am very glad to do business with you and your company and feel confident that you will exert your best influence to secure the best deal possible for the Cleveland Cliffs Iron Company under present conditions.

I was sorry not to see you Friday but found it necessary to return as the Dow people desired to close up the contract involving our chemical plant. I am enclosing clipping from the morning Plain Dealer which covers that point. It is my plan to return to New York, probably leaving here next week although

Decoration Day rather breaks up matters. Please advise me whether you will be in your office the 29th or 31st.

Sincerely yours,

E. B. GREENE, *President.*

EBG JS

EXHIBIT No. 1829

[From the files of Bankers Trust Company]

MAY 28, 1935.

MR. EDWARD B. GREENE,

*President, the Cleveland-Cliffs Iron Co.,
Cleveland, Ohio.*

DEAR ED: Thank you for your letter of the 25th. As I told you in today's telephone conversation I think that you are justified in stating to the various stockholders with whom the matter must be discussed, that you believe a plan along the general lines worked out when you were here can be accomplished. That plan involved a first mortgage and collateral trust bond to run for fifteen years, to carry a sinking fund that would retire a million par value of bonds annually, to carry a coupon of $4\frac{1}{2}\%$ and to be issued under an indenture to Bankers Trust Company which would carry the usual protective provisions. While we estimated that the cost to the company on an amortized yield basis would be approximately 5%, that would vary somewhat depending on the prices, and the rate, at which the sinking fund operated from year to year.

You would have to make it clear, of course, that the program may have to be varied to meet conditions existing at the time when the issue is ready for sale. All you can do is present the general outline of your plan with the understanding that you are authorized to make such changes in it as market conditions at the time might require.

There can be no misunderstanding between us as to the spirit of the contract under which we were appointed as the agent of your company to secure the refunding of the bank debt. I am a little concerned as to just how to handle the commission of 1% which under the contract we are to receive for our services. Under the law we cannot become a partner in an underwriting and I will therefore have to make it clear to the houses which eventually constitute the underwriting group that we are acting in an agency capacity for a commission. It is especially important because I think it is quite clear to both of us that the interest of the company would best be served if one major group can be formed to handle not only this job but the sale of any of the portfolio securities. This should apply whether the securities are sold in advance of the bond issue or after their deposit as collateral thereunder. The underwriting group as now contemplated would be fully capable of handling the entire situation and I expect to direct my efforts towards (a) establishing a group made up of houses which in one way or another have had some contact with this situation and (b) securing an agreement from that group to hold itself available for any financial operation which the company may subsequently undertake. I am satisfied that that is the sound and sensible way to do the business.

I will look forward to seeing you either on Monday or Tuesday. I hope that the intervening holiday will have fixed up your cold. Rest in the country is about the best cure.

As ever yours,

BAT. B

EXHIBIT No. 1830

[From the files of Bankers Trust Company]

FEBRUARY 2, 1935.

MR. EDWARD GREENE,

Cleveland Cliffs Iron Co., Cleveland, Ohio.

MY DEAR ED: This is just to put you up to date on the matter of the purchase of Mr. Mather's stock by Messrs. Hayden Stone et als and our hope that we would be given an opportunity to participate in that purchase.

You will recall that when you told me that Hayden Stone & Co. had been in negotiation on that matter and asked what my point of view would be with

reference to ceding that firm an interest in the bond financing, I told you that we would be very happy to offer them an interest. I believe that you advised Mr. Hayden of our attitude on that point. At that time I suggested that I thought it would be very gracious, and helpful to the whole situation, if in return for our offering them an interest in the bond business they offered us an opportunity to join them in their purchase of the stock. It was your feeling that that would make a happy party all around and you expressed that feeling to Mr. Mitchell.

You will recall the conversation which you and I had with Messrs. Mather and Belden just before they were leaving for their final talk with Mr. Mitchell. I pointed out to Mr. Mather that I was unwilling to have my request for a participation in the stock purchase in any way interfere with his selling his stock. I merely pointed out that I thought it would be in the interest of all parties concerned if Hayden Stone & Co. through Mr. Mitchell offered us an opportunity to share in the purchase.

Mr. Mather and Mr. Belden came back to my office late that afternoon and advised me that Mr. Mitchell had stated that the two transactions were separate and distinct, that he was prepared to purchase the full 200,000 shares and that any participation which Hayden Stone & Co. might be offered in the bond issue was a separate matter. I thereupon told Mr. Mather and Mr. Belden what I had already said to you, namely that that attitude on the part of Messrs. Hayden Stone & Co. relieved me from any possible obligation to offer them an interest in the bond purchase. I said that I would immediately telephone Mr. Mitchell and advise him of that fact.

When I telephoned Mr. Mitchell had left for the day, but the following afternoon he called at my office. He said that Mr. Mather and Mr. Belden had misunderstood him, that he agreed that it would be nice to have us interested in the stock purchase and that he was prepared to discuss that and asked my views as to what would be fair. I suggested that if he offered us an opportunity to take a 25% interest in his purchase we would reciprocate by offering his firm a 25% interest in the bond account. He then asked if his firm would come into the bond account on original terms and I said, of course, that they would. He then said that he felt that we should pay his firm a profit in the stock matter, that is if we took a 25% interest it should be at a stepped-up price. I said that that was all right if he wanted it that way and that we could put his firm's participation in the bond account on the same basis; that I thought it would be better, however, if we acted as partners in the matter, we to come into the stock at his cost and he to come into the bonds at our cost. He said that he would think it over and let me know.

Today he telephoned me that he had discussed the matter with his partners and they had decided to offer us no participation in the stock purchase. I said that I was sorry but that I would have to accept that and that of course he understood that I had no obligation to offer his firm an interest in the bond matter. He confirmed that that was his understanding.

I regret that Mr. Mitchell and his associates reached that decision, but I could do nothing but accept it. I thought, however, that I should immediately write you and tell you the story.

Sincerely yours,

B.A.B.

EXHIBIT No. 1831

[From the files of Bankers Trust Company]

JUNE 6, 1935.

MR. EDWARD B. GREENE,

*President, Cleveland Cliffs Iron Company,
Cleveland, Ohio.*

DEAR ED: AS agreed I called a meeting today at which were present members of the firms of Lehman Brothers, Field Gloré, Kuhn Loeb & Company and Hayden Stone & Company. We discussed the whole situation at some length and reached the following general conclusions:

1. The Republic-Corrigan merger is of great importance not only to the business of Cleveland Cliffs, but to the sale of its securities.

2. With the accomplishment of both the Cleveland Cliffs and Cliffs Corporation merger, and the Republic-Corrigan merger, a refunding bond issue of Cleveland Cliffs would be well received.

3. With your own merger accomplished, but with the Republic-Corrigan matter still in the courts the difficulty of the problem would be greatly increased. A refunding issue could be sold but the group would feel obliged to consider the matter with great care before attempting an offering to the public.

4. There is a chance that within the next ten days you will have had definite word as to the Government's intention in the Republic matter. If you are officially advised by the Government that it will not appeal, the problem is greatly simplified and we can all proceed with much more assurance.

5. If the Government elects to appeal you could proceed with your own merger and the group would take under consideration its ability to sell a refunding issue, and would advise you at that time as to the terms and conditions under which it believed such an issue could be marketed.

I think that the above represents the composite view of the meeting. There was some discussion as to the desirability of selling a split issue as against a straight mortgage and collateral trust issue. It is my understanding that you and your associates prefer the latter but I think that you should not close your mind to the former in case after further deliberation it seems to have advantages from the company's standpoint.

When you come down next week I will be interested to hear of what further progress you have made with the stockholders with whom you have been discussing the situation. In the interim, with best personal wishes, believe me

Sincerely yours,

EAT.B.

EXHIBIT No. 1832

[From the files of Bankers Trust Company]

KUHN, LOEB & Co.

William and Pine Streets

NEW YORK, July 9, 1935.

DEAR TOMMY, This is to acknowledge your memorandum of July eighth which is in accordance with my understanding except as concerns the matter of counsel. I am trying to get you on the telephone to say that in order to avoid any possible embarrassment to us in connection with our Republic-Corrigan negotiations, we should prefer either to have Cravath, deGersdorff, Swaine & Wood act as counsel for the bankers in the Cliffs transaction, or if Lehman Brothers have already spoken to Sullivan and Cromwell, then in that event to have Cravath act as co-counsel. The experience of the Cravath firm in the Cleveland steel and ore situations seems to me to especially fit them for this assignment.

As you may recall I made a memorandum at our last meeting in your office of my understanding of the agreement which we had reached and read it to the group. It is now a part of my office record and I am enclosing a copy of it herewith.

Faithfully yours,

LEWIS L. STRAUSS.

B. A. TOMPKINS, Esq.,

Bankers Trust Company, 16 Wall Street,
New York, N. Y.

LLS:MG.
encl.

EXHIBIT No. 1833

[From the files of Bankers Trust Company]

MEMORANDUM

The following memorandum of conclusions reached at meeting in the office of Mr. B. A. Tompkins of Bankers Trust Company on June 28, 1935, jotted down by me at the time and read to those present, being Messrs. B. A. Tomp-

kins, Robert Lehman, Monroe Gutman, Russell Forgan, John Fennelly, Richard Morris, Lewis L. Strauss.

"A group is formed to do financing for a company proposed to be organized by the consolidation of Cliffs Corporation and Cleveland Cliffs Company, to consist of Messrs. Lehman Brothers, Field, Glore & Co., Hayden, Stone & Co., and Kuhn, Loeb & Co., each party to the group to have an equal interest of 25%; if any other parties are admitted to the business they are to receive participations made up pro-rata from the shares of the participants and are to be admitted only upon general concurrence. Lehman Brothers are to manage the initial business; subsequent leadership is to rotate; Kuhn, Loeb & Co. to be silent members of the group, that is to say their name is to appear where legally required in the Registration Statement and in the body of the Prospectus (not the front page of the Prospectus or advertising) and on the last line in each instance and in no other documents without their consent.

"Lehman Brothers and the Bankers Trust Company are to receive under the agreement with Mr. Green, $\frac{1}{2}\%$ each from the Company—not to be a cost to the business—but Lehman Brothers' $\frac{1}{2}\%$ may be in the nature of a management fee if legally necessary to so arrange it. No precedent of management fee is to be applicable to subsequent business.

The stock collateral when, as and if liquidated is to be handled by the group as a whole."

L. L. S.

EXHIBIT No. 1834

[From the files of Bankers Trust Company]

JUNE 28, 1935.

MR. EDWARD GREENE,

*President, Cleveland Cliffs Iron Company,
Cleveland, Ohio.*

DEAR ED: This is in confirmation of our telephone conversation today.

We have succeeded in forming an underwriting group to handle the Cleveland Cliffs financing. It consists of the following firms: Messrs. Lehman Brothers, Field, Glore & Company, Kuhn Loeb & Company and Hayden Stone & Company. The interests in the account will be equally divided. Messrs. Lehman Brothers will act as syndicate manager. Kuhn, Loeb & Company will not appear in the prospectus or in any public advertising but will appear in the registration statement.

This group stands ready to handle not only the refunding problem which is immediately before us but any future financing that the company may do including the sale of any of its portfolio assets.

They are willing to sell an issue of fifteen year refunding bonds regardless of the fact that the Republic-Corrigan merger is still an unsettled matter. They will handle either a bond with a 5% coupon or a $4\frac{1}{2}\%$ coupon, and will charge for their services the usual spread that is involved in issues of this character, and will sell the bonds to the public at the best price which in their opinion can be obtained at the time that the issue is ready to go to the market. As I have made clear to you on several occasions and as I repeated in our telephone conversation, the group cannot at this date tell you definitely the price which can ultimately be secured for bonds which may not be ready for sale until some months hence. You can depend upon it, however, that for whatever type of issue it is finally decided to sell the public price will be fair to your company and the syndicate spread equally fair. The net price to your company would be the public price less the syndicate spread, less 1% commission payable to Bankers Trust Company.

It seems to me that this puts you in a position to say to the various parties in interest that you have an agreement from a strong and responsible group to do your refunding on a long term basis, the exact net to the company to be determined at the time of offering and to be based not only on the type of issue which is eventually determined upon but on market conditions at that time.

I am particularly pleased with this arrangement because it means that you have back of your financing a group that has important affiliations in the steel industry and that is capable of doing not only this immediate job but whatever additional jobs may later need to be done.

If there is any part of this letter which is not entirely clear to you please let me know. If on the other hand it meets your wishes and fully sets forth your understandings of our agreement please initial and return to me the enclosed carbon copy.

Sincerely yours,

B. A. T.

B.A.T.B

EXHIBIT No. 1835

[From the files of Bankers Trust Company]

WM. G. MATHER, *Chairman of Board*
E. B. GREENE, *President*
A. C. BROWN, *Vice President*
S. L. MATHER, *Vice President*

V. P. GEFFINE, *Vice Pres. & Secy.*
C. G. HEER, *Treasurer*
E. H. JAYNES, *Ass't Secretary*

THE CLEVELAND-CLIFFS IRON CO.,

Offices 14th Floor Union Trust Building

MR. B. A. TOMPKINS,
V. P., *Bankers Trust Company,*
New York City.

CLEVELAND, OHIO, *July 2, 1935.*

DEAR TOMMY: Your letter of the 28th ult. is received. You have formed a strong underwriting group of firms with which I am sure our company would be glad to be associated.

I note also that this group is willing to buy the issue of fifteen-year sinking fund bonds regardless of the fact that the Republic-Corrigan McKinney merger may be still unsettled at the time the bonds are offered. This also is satisfactory.

I am disappointed however, in the last paragraph on the first page in which you state the terms upon which the bonds will be handled. Your statement is, of course, a wide departure from our contract, but even considering it as an offer to substitute a new plan, it is not satisfactory. Under our present understanding, the price of the bonds is set at par for a 5% bond, less 1% commission, but with the usual clause that if market conditions change to a marked degree, the price is to be adjusted to a figure which is satisfactory to both parties. According to your letter of June 28th you reserve the right to buy the bonds at the best price which in the opinion of the group can be obtained at the time the issue is ready to go to the market. In other words, this would give us no part in determining the price at which the bonds are to be bought. If we are to depart from the contract provision that you are to take the bonds at par less 1% commission, it seems to me our arrangement should at least provide that the price at which the bonds will be bought will be mutually satisfactory.

Also the sentence in which you say that we can depend upon it that the public price will be fair to our company "and the syndicate spread equally fair" is open to the further objection that this clause apparently reserves to the group the sole right to determine what is fair in respect to these matters and would give us no voice in agreeing upon the syndicate spread. I think in respect to both of these vital matters, if they are to be left open to be determined in the future, it must be at prices and upon terms which are mutually satisfactory to the parties.

I appreciate, as stated in your letter, that an arrangement with this group gives us the benefit of a connection with banking houses that have important affiliations with the steel industry and that this would be useful and valuable to our company, and we would like to have the arrangement made in such manner that it would be acceptable. I am sure you will appreciate the importance of the two points to which I have called your attention. Perhaps the statement of them in the manner expressed in your letter was unintentional and what you really have in mind is that the price at which the bonds will be sold and the amount of the syndicate spread are matters to be mutually agreed upon at the time when the bonds are offered for sale.

I should like to hear from you as to both of these matters at your early convenience.

Sincerely yours,

E. B. GREENE,
President.

EBG:JS

"EXHIBIT No. 1836" appears in full in the text, p. 12457.

EXHIBIT No. 1837.

[From the files of Bankers Trust Company]

CLEVELAND-CLIFFS IRON COMPANY

A meeting was held this morning at the offices of Lehman Brothers attended by Messrs. Greene and Geffine (C. C. I.) Gutman and Szold (Lehman Brothers), Morris (Hayden Stone) Forgan and Fennelly (Field, Glore), Brown (Kuhn Loeb) and the undersigned.

Mr. Greene reported that the management had decided to abandon the Cliffs' merger plan, at least for the time being, due to Wachner's decision to oppose the merger, even on an amended basis. The management had offered to change the original terms so that the new preferred would be convertible at 2½ instead of 2 shares of common and Cliffs would receive 35% rather than 30% of the common, or 31% as against 28% assuming conversion. Mr. Greene proposes to go ahead with the Cleveland Cliffs' financing on the basis of no merger with Cliffs Corp. He submitted a memorandum outlining the Company's proposal.

Mr. Greene stated that Mr. Tompkins had generously released him from the contract which he had with Bankers Trust Company, explaining that he was no longer under any legal obligation to deal through Bankers Trust Company or with the group, nor was he liable to us for any fee. However, he stated that he wished to deal with the group as it was set up by Mr. Tompkins and said that he would not have any conversation with any other group unless a definite deadlock develops in the present negotiations. Mr. Greene wants to receive early next week if possible, an expression of opinion from the group as to the feasibility of a deal along the lines he proposes. In the meantime, Mr. Gutman suggested that the group go ahead in the matter of investigating the legal and technical requirements involved in the registration, prospectus, etc., and instigate such appraisals as may be necessary. The group agreed to this and another meeting to discuss procedure, etc., was held this afternoon in which Messrs. Palmedo of Lehman and Seligman of Sullivan & Cromwell joined; Messrs. Morris, Brown, Forgan and Fennelly did not attend.

A meeting of the group was called for Friday morning at 10:30 to discuss Mr. Greene's proposal.

I informed Mr. Tompkins of the morning meeting by phone.

DANA KELLEY,
Analysis Department.

August 28, 1935

DK:AM

EXHIBIT No. 1838

[Letter from Lehman Brothers to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

LEHMAN BROTHERS,
One William Street, New York, January 5th, 1940.

MR. PETER R. NEHEMKIS, JR.,
*Special Counsel, Investment Banking Section, Monopoly Study,
Securities and Exchange Commission, Washington, D. C.*

DEAR MR. NEHEMKIS: As requested, we are pleased to enclose herewith the stipulation concerning six documents which Messrs. Altman and Fields of your staff obtained from our files some time ago. We appreciate your courtesy in permitting these documents to be identified in this manner.

Very truly yours,

LEHMAN BROTHERS.

EG: S
Encl.

STIPULATION

It is hereby stipulated and agreed that the documents listed below are true copies of original communications or carbon copies in the files of Lehman Brothers, and that they were prepared, received, or sent, as the case may be, by Lehman Brothers.

1. Letter from Lehman Brothers to Hayden, Stone & Co., dated October 28, 1935.
2. Letter from Lehman Brothers to Field, Glore & Co., dated October 28, 1935.
3. Letter from Lehman Brothers to Kuhn, Loeb & Co., dated October 28, 1935.
4. Memorandum to Douglas Dimond by M. C. Gutman, dated December 2, 1935. (Referring to request by B. A. Tompkins to include C. D. Barney & Company in Cleveland Cliffs syndicate.)
5. Letter from Kuhn, Loeb & Co. to Lehman Brothers, dated November 22, 1935.
6. Memorandum to I. Sack by M. C. Gutman, dated August 24, 1936.

LEHMAN BROS.
Lehman Brothers

EXHIBIT No. 1839

[From the files of Lehman Brothers. Letter from Lehman Brothers to
Hayden Stone & Co.]

LEHMAN BROTHERS,
One William Street, New York, October 28th, 1935.

HAYDEN, STONE & Co.,
25 Broad Street, New York City.

GENTLEMEN: We desire to confirm our understanding with you with respect to the proposed Cleveland Cliffs Iron Company financing as follows:

The participants in the business and their interests are as follows:

Lehman Brothers.....	25%
Field, Glore & Co.....	25%
Hayden, Stone & Co.....	25%
Kuhn, Loeb & Co.....	25%

Lehman Brothers shall manage the business and as compensation therefor, shall receive from the participants pro rata (including themselves) an amount equal to one-fourth of 1% of the principal amount of the Bonds. In the case of any future Cleveland-Cliffs financing by this group the management and the order of names will be rotated among the above-named participants. No compensation shall be paid for the management in the case of any such future financing.

In accordance with the request of Kuhn, Loeb & Co. their name will not appear in the advertisements, the cover of the prospectus or selling group letters in this business. In the case of any subsequent financing their name will not appear in such documents if they so desire.

It is understood that additional participants may be admitted into the business by agreement of the four participants above named, in which event the participations hereinabove set forth will be reduced proportionately.

Expenses will be borne by the participants in accordance with their respective participations including therein such portion of the fee of Messrs. Sullivan & Cromwell, as comes to the participants, as shall not be paid by the Company and also the fee of Messrs. Cravath, deGersdorff, Swaine & Wood who will be associated with them.

Please confirm your understanding of the above by signing the enclosed duplicate at the foot hereof.

Yours very truly,

CONFIRMED: HAYDEN, STONE & Co.

EXHIBIT No. 1840

[From the files of Lehman Brothers]

LEHMAN BROTHERS,

One William Street, New York, October 28th, 1935.

FIELD, GLORE & Co.,

38 Wall Street, New York City.

GENTLEMEN: We desire to confirm our understanding with you with respect to the proposed Cleveland Cliffs Iron Company financing as follows:

The participants in the business and their interests are as follows:

Lehman Brothers.....	25%
Field, Glore & Co.....	25%
Hayden, Stone & Co.....	25%
Kuhn, Loeb & Co.....	25%

Lehman Brothers shall manage the business and as compensation therefor, shall receive from the participants pro rata (including themselves) an amount equal to one-fourth of 1% of the principal amount of the Bonds. In the case of any future Cleveland-Cliffs financing by this group the management and the order of names will be rotated among the above-named participants. No compensation shall be paid for the management in the case of any such future financing.

In accordance with the request of Kuhn, Loeb & Co. their name will not appear in the advertisements, the cover of the prospectus or selling group letters in this business. In the case of any subsequent financing their name will not appear in such documents if they so desire.

It is understood that additional participants may be admitted into the business by agreement of the four participants above named, in which event the participations hereinabove set forth will be reduced proportionately.

Expenses will be borne by the participants in accordance with their respective participations including therein such portion of the fee of Messrs. Sullivan & Cromwell, as counsel to the participants, as shall not be paid by the Company and also the fee of Messrs. Cravath, deGersdorff, Swaine & Wood who will be associated with them.

Please confirm your understanding of the above by signing the enclosed duplicate at the foot hereof.

Yours very truly,

CONFIRMED: Field Glore & Co.

This understanding is confirmed on the assumption that the Lehman management fee is to be deducted from a gross spread of $3\frac{1}{4}$ points.

FIELD GLORE & Co.

EXHIBIT No. 1841

[From the files of Lehman Brothers]

LEHMAN BROTHERS,

One William Street, New York, October 28th, 1935.

KUHN, LOEB & Co.,

52 William Street, New York City.

GENTLEMEN: We desire to confirm our understanding with you with respect to the proposed Cleveland Cliffs Iron Company financing as follows:

The participants in the business and their interests are as follows:

Lehman Brothers.....	25%
Field, Glore & Co.....	25%
Hayden, Stone & Co.....	25%
Kuhn, Loeb & Co.....	25%

Lehman Brothers shall manage the business and as compensation therefor, shall receive from the participants pro rata (including themselves) an amount equal to one-fourth of 1% of the principal amount of the Bonds. In the case

of any future Cleveland-Cliffs financing by this group the management and the order of names will be rotated among the above-named participants. No compensation shall be paid for the management in the case of any such future financing.

In accordance with the request of Kuhn, Loeb & Co. their name will not appear in the advertisements, the cover of the prospectus or selling group letters in this business. In the case of any subsequent financing their name will not appear in such documents if they so desire.

It is understood that additional participants may be admitted into the business by agreement of the four participants above named, in which event the participations hereinabove set forth will be reduced proportionately.

Expenses will be borne by the participants in accordance with their respective participations including therein such portion of the fee of Messrs. Sullivan & Cromwell, as counsel to the participants, as shall not be paid by the Company and also the fee of Messrs. Cravath, deGersdorff, Swaine & Wood who will be associated with them.

Please confirm your understanding of the above by signing the enclosed duplicate at the foot hereof.

Yours very truly,

CONFIRMED: Kuhn, Loeb & Co. _____

EXHIBIT No. 1842

[From the files of Lehman Brothers]

LEHMAN BROTHERS
FOR INTER-OFFICE USE

MEMORANDUM

Date Dec. 2, 1935.

To Douglas Dimond

As you know, Bankers Trust had a great deal to do with the Cleveland-Cliffs business.

Mr. Tompkins called up especially to request a position for C. D. Barney & Co. I told him there was no originating position possible at this time but he requested that we try to take care of them as well as we can in the Selling Group.

M. C. GUTMAN.

EXHIBIT No. 1843

[From the registration statement on file with the Securities and Exchange Commission--Cleveland Cliffs Iron Co., \$16,500,000 1st Mtge. 4% %, of 1950. Filed in 1935]

EXTRACT FROM LOAN AGREEMENT BETWEEN CLEVELAND CLIFFS IRON COMPANY, BANKERS TRUST COMPANY, CLEVELAND TRUST COMPANY AND THE FIRST NATIONAL BANK OF CHICAGO WITH REFERENCE TO LOAN OF \$5,000,000 TO SUPPLEMENT THE ABOVE BOND ISSUE

This Agreement, made the 13th day of December, 1935, between Cleveland-Cliffs Iron Company, an Ohio corporation, hereinafter called the "Company," and BANKERS TRUST COMPANY, a New York corporation, THE CLEVELAND TRUST COMPANY, an Ohio corporation, and THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, herein sometimes called "the Banks."

WHEREAS, the Company has agreed to borrow, and the other parties hereto have agreed severally to lend to the Company contemporaneously with the execution hereof the following amounts upon the following terms, as to rate and maturity:

Bankers Trust Company-----	\$2,000,000
First National Bank of Chicago-----	2,000,000
The Cleveland Trust Company, Cleveland-----	1,000,000

the loans by each Bank to mature:

Five percent (5%) June 1, 1936, or before that date at the Company's option.

Five percent (5%) June 1, 1937, or before that date at the Company's option.

Five percent (5%) June 1, 1938, or before that date at the Company's option.

Five percent (5%) June 1, 1939, or before that date at the Company's option.

Five percent (5%) June 3, 1940, or before that date at the Company's option.

Balance December 2, 1940, or before that date at the Company's option.

each maturity due to each Bank to be represented by a note of the Company bearing interest at the rate of 4 $\frac{3}{4}$ % per annum, in the form annexed, marked "A"; and

WHEREAS, said loans by the Banks are agreed to be secured by the hypothecation with each of the Banks separately of that proportion of the following described securities which the loan of each Bank bears to the sum of \$5,000,000.

COLLATERAL

460,667 shares of Common Stock, without par value, of Republic Steel Corporation.

135,987 shares of Common Stock, without par value, of The Otis Steel Company.

20,190 shares of 7% Cumulative Prior Preference Stock, \$100 par value, of The Otis Steel Company.

1,839 shares of the Preferred Stock, \$100 par value, of Wheeling Steel Corporation.

2,620 shares of Common Stock, without par value of Wheeling Steel Corporation.

EXHIBIT No. 1844

[From the files of Bankers Trust Company. Letter from B. A. Tompkins to Edward B. Greene]

DECEMBER 18, 1935.

MR. EDWARD B. GREENE,

President, The Cleveland Cliffs Iron Co.,

14th Floor Union Trust Building,

Cleveland, Ohio.

DEAR ED: Thank you for your check for \$25,000 and for all the nice things you said in your note of December 16th. I think that your Board and the stockholders of your company should be saying equally nice things about your handling of the situation on their behalf.

I talked to Charlie Hayden, Dick Morris and Steele Mitchell today regarding a sub-participation in the bank loan. I told them that our own banking department was loathe to approach the other banks on the matter and that I thought that if a sub-participation were made it might prove considerably embarrassing for you in your relations with the Continental and the Bank of Manhattan. Looking back over the matter the loan probably should have been set up on a basis which would have included both the Continental and the Manhattan and allowed for a participation by the Equitable. But it was closed on the other basis. While I think Hayden Stone & Co. have been most helpful in the situation and while I think their request is a reasonable one, I, nevertheless, feel that the banks who have carried the loan for a great many years should not now be asked to sub-participate and I further believe that the Manhattan and the Continental might have a very just grievance if that were done.

I am leaving for the South tomorrow for a little rest and I hope that you will be able to get away for the holidays. A good Christmas to you and all the luck in the world in the year ahead.

Sincerely yours,

BAT/VLS

EXHIBIT No. 1845

[From the files of Lehman Brothers]

KUHN, LOEB & Co.

William and Pine Streets

New York, November 22, 1935.

MESSRS. LEHMAN BROTHERS,
1 William Street,
New York, N. Y.

DEAR SIRs: We have your letter of the 21st instant with the enclosed check for \$218.75, representing our interest in the net commissions earned on the sale of 10,000 shares of Republic Steel Corporation Common Stock for account of Cleveland Cliffs Iron Company.

Thanking you, believe us

Very truly yours,

p. p. KUHN, LOEB & Co.

H. E. STRIPP, P. M. STEWART.

PMS:J

EXHIBIT No. 1846

[From the files of Lehman Brothers]

AUGUST 24TH, 1936.

(Handwritten:) Return to Miss Rainer.

Memorandum to Mr. I. Sack:

I notice, while I was away, that we sold a block of Republic Iron & Steel for Bankers Trust Company. This really was for Cleveland-Cliffs Iron Company, and as per our agreement with our partners in Cleveland-Cliffs, they should share in the net commissions as they did in previous sales made.

If this has not already been done, will you please see that it is taken care of.

M. C. GUTMAN.

(Hand written):

7/31 Paid H. S. & Co.	437.50
F. G. & Co.	437.50
K. L. & Co.	437.50
¼ cash net	2,000 shs. Rep. Steel Corp.

EXHIBIT No. 1847-1

[From the files of the Securities and Exchange Commission]

Extract 1-A-10 of Registration Statement of Cleveland Cliffs Iron Company in connection with First Mortgage Sinking Fund 4¾ % Bonds due November 1, 1950, principal amount \$16,500,000.

AGREEMENT BETWEEN THE CLEVELAND-CLIFFS IRON COMPANY AND PRINCIPAL UNDERWRITERS WITH REGARD TO THE SALE OF 20,000 SHARES OF COMMON STOCK WITHOUT PAR VALUE OF REPUBLIC STEEL CORPORATION

MESSRS. Kuhn, Loeb & Co.,
Field, Glore & Co.,
Hayden, Stone & Co.,
Lehman Brothers.

OCTOBER 31, 1935.

DEAR SIRs: The undersigned, The Cleveland-Cliffs Iron Company, an Ohio corporation, hereby confirms the agreement with you as follows:

Subject to the terms and conditions hereinafter set forth, the Company will sell to you severally and you severally will purchase from the Company and pay for an aggregate of 20,000 shares of common stock without par value of Republic Steel Corporation, owned by the Company, at the price of \$17 per

share. The number of shares to be sold to and purchased by you respectively are:

Kuhn, Loeb & Co.....	5,000 shares
Field, Glore & Co.....	5,000 shares
Hayden, Stone & Co.....	5,000 shares
Lehman Brothers.....	5,000 shares

Delivery of and payment in New York funds for the shares will be made at the office of Hayden Stone & Co., 25 Broad Street, New York, N. Y., at ten o'clock A. M., Monday, November 4, 1935. The stock certificates will be in negotiable form good for delivery under the rules of the New York Stock Exchange and all necessary stock transfer stamps will be affixed and cancelled.

The obligation of the Company to sell the shares of stock and your obligation to purchase the same shall be subject to the delivery to the Company and to you of the opinion of Messrs. Belden, Young & Veach of Cleveland, Ohio, as to the validity of the stock and as to the power of the Company to make such sale.

If the above is in accordance with your understanding please sign the acceptance clause on the enclosed duplicate at the foot hereof.

Yours very truly,

THE CLEVELAND-CLIFFS IRON COMPANY,
By E. B. GREENE, *President*.
Attest:

E. H. JAYNES, *Secretary*.

Accepted and agreed to this 1st day of November, 1935. ,

KUHN, LOEB & Co.
FIELD, GLORE & Co.
HAYDEN, STONE & Co.
LEHMAN BROS.

EXHIBIT No. 1847-2

[From the files of the Securities and Exchange Commission]

Extract 1-A-12 of Registration Statement of Cleveland Cliffs Iron Company in Connection with First Mortgage Sinking Fund 4-¾% Bonds due November 1, 1950, principal amount \$16,500,000.

AGREEMENT BETWEEN MCKINNEY STEEL HOLDING COMPANY AND PRINCIPAL UNDERWRITERS WITH REGARD TO THE SALE OF \$5,500,000 PRINCIPAL AMOUNT OF REPUBLIC STEEL CORPORATION PURCHASE MONEY FIRST MORTGAGE CONVERTIBLE 5½% BONDS DUE NOVEMBER 1, 1954.

OCTOBER 31, 1935.

Messrs. Kuhn, Loeb & Co.
Field, Glore & Co.
Hayden, Stone & Co.
Lehman Brothers.

DEAR SIRS: The undersigned, McKinney Steel Holding Company, a Delaware corporation, hereby confirms its agreement with you as follows:

Subject to the terms and conditions hereinafter set forth, the Company will sell to you severally, and you severally will purchase from the Company and pay for, \$5,500,000 principal amount of Republic Steel Corporation Purchase Money First Mortgage Convertible 5½% Bonds due November 1, 1954, owned by the Company, at the price of 104% of the principal amount thereof and accrued interest to date of delivery. The amounts of said bonds to be sold to and purchased by you respectively are:

Kuhn, Loeb & Co.....	\$1,375,000
Field, Glore & Co.....	\$1,375,000
Hayden, Stone & Co.....	\$1,375,000
Lehman Brothers.....	\$1,375,000

Delivery of and payment in New York funds for the bonds will be made at the office of Kuhn, Loeb & Co., 52 William Street, New York, N. Y., at ten o'clock A. M., November 18, 1935.

Definitive coupon bonds in the denomination of \$1,000 each are to be delivered. The Company will pay all transfer taxes in connection with this sale.

The obligation of the Company to sell the bonds and your obligation to purchase the same shall be subject

(a) to the Company's securing corporate power by amendment of its Certificate of Incorporation to make such sale,

(b) to the delivery to the Company and to you of the opinion of Messrs. Squire, Sanders & Dempsey and Messrs. Belden, Young & Veach, Cleveland, Ohio, as to the corporate proceedings of the Company in connection with the sale of such bonds, and the opinion of Messrs. Belden, Young & Veach as to the validity of the bonds and of the mortgage under which the same are issued in accordance with their terms,

(c) to the approval of your counsel of the corporate proceedings of the Company in connection with the sale of such bonds.

Said bonds have been registered under the Securities Exchange Act of 1934 and are listed on the New York Stock Exchange subject to satisfying the requirements of such Exchange as to distribution.

Please confirm your agreement with this Company in accordance with the foregoing.

Yours very truly,

McKINNEY STEEL HOLDING COMPANY,
By OSCAR L. COX, *President*.
Attest:

E. H. JAYNES, *Asst. Secretary*.

Accepted and agreed to this 1st day of November, 1935.

KUHN, LOEB & Co.
FIELD, GLORE & Co.
HAYDEN, STONE & Co.
LEHMAN BROS.

EXHIBIT No. 1847-3

[From the files of the Securities and Exchange Commission]

Extract 1-A-14 of Registration Statement of Cleveland Cliffs Iron Company in connection with First Mortgage Sinking Fund 4¾% Bonds due November 1, 1950, principal amount \$16,500,000.

AGREEMENT BETWEEN McKINNEY STEEL HOLDING COMPANY AND PRINCIPAL UNDERWRITERS WITH REGARD TO THE SALE OF 10,000 SHARES OF 6% CUMULATIVE CONVERTIBLE PRIOR PREFERENCE SERIES A STOCK OF REPUBLIC STEEL CORPORATION

OCTOBER 31, 1935.

MESSRS. KUHN, LOEB & COMPANY,
FIELD, GLORE & COMPANY,
HAYDEN, STONE & COMPANY,
LEHMAN BROTHERS.

DEAR SIR: The undersigned, McKinney Steel Holding Company, a Delaware corporation, hereby confirms its agreement with you as follows:

Subject to the terms and conditions hereinafter set forth, the Company will sell to you severally, and you severally will purchase from the Company and pay for an aggregate of 10,000 shares of 6% Cumulative Convertible Prior Preference Series A Stock of Republic Steel Corporation, owned by the Company at the price of eighty-two per cent of the par value thereof. The number of shares to be sold to and purchased by you respectively are:

Kuhn, Loeb & Co.	2,500 shares
Field, Glore & Co.	2,500 shares
Hayden, Stone & Co.	2,500 shares
Lehman Brothers	2,500 shares

Delivery of and payment in New York funds for the shares will be made at the office of Field, Glore & Company, 40 Wall Street, New York, N. Y., at 10 o'clock A. M., Monday, November 4, 1935. The stock certificates will be in negotiable form good for delivery under the rules of the New York Stock Exchange and all necessary stock transfer stamps will be affixed and cancelled.

The obligation of the Company to sell the shares of stock and your obligation to purchase the same shall be subject to the delivery to the Company and to you of the opinion of Messrs. Squire, Sanders & Dempsey and Messrs. Belden, Young & Veach, of Cleveland, Ohio, as to the power of the Company to make such sale, and the opinion of Messrs. Belden, Young & Veach as to the validity of the stock.

If the above is in accordance with your understanding please sign the acceptance clause on the enclosed duplicate at the foot hereof.

Yours very truly,

McKINNEY STEEL HOLDING COMPANY,
By OSCAR L. COX, *President*.

Attest:

E. H. JAYNES, *Asst. Secretary*.

Accepted and Agreed to this 1st day of November, 1935.

KUHN, LOEB & Co.
FIELD, GLORE & Co.
HAYDEN, STONE & Co.
JEHMAN BROS.

EXHIBIT No. 1848

[From the files of Kuhn, Loeb & Co. Letter from Kuhn, Loeb & Co. to Guaranty Company of New York]

MAY 22, 1930.

(Stamped:) Kuhn, Loeb & Co. May 26, 1930. Filing Department. Official
J. R. SWAN, Esq.,
President, Guaranty Company of New York,
31 Nassau Street, New York, N. Y.

DEAR SIR: This is to confirm the agreement between us respecting future financing by the *American Smelting and Refining Company*.

In the event of financing under the First Mortgage of the Company, we are to be interested to the extent of 33⅓%, and yourselves and associates to the extent of 66⅔%. In the case of such financing, the business is to be directed from our office and the negotiations will be carried on by us.

In the case of financing other than under the First Mortgage, we are to be interested on original terms in the same amount as yourselves, which you have advised us is 22% in the purchase of the Second Preferred Stock now being made, and will be 21% in case the *Irving Trust Company* should hereafter be included in any transaction. All such business will be directed from your office and negotiated by you.

In circulars, advertisements, syndicate letters, etc., our name will appear first or at the left of your name, the two names comprising the first line of signatures.

Please confirm that the foregoing is in accordance with your understanding.

Yours very truly,

MC

Stamped also as "Seen by" and initialed.

EXHIBIT No. 1849

[From the files of Kuhn, Loeb & Co.]

J. R. SWAN, *President*

Cable address: "*Fidelibond*," New York

GUARANTY COMPANY OF NEW YORK,
31 Nassau Street, New York, May 26, 1930.

Kuhn, Loeb & Co. May 29, 1930. Filing Department.

Received, May 27, 1930. Filed June 3, 1930.

KUHN, LOEB & Co.,

William and Pine Streets, New York, N. Y.

GENTLEMEN: We are in receipt of your letter of May 22, in which you outline the agreement between us respecting future financing by the *American Smelting & Refining Company*, all of which is in accordance with our understanding.

Very truly yours,

J. R. SWAN, *President*.

JRS: FPS: DM.

EXHIBIT No. 1850

[From the files of Kuhn, Loeb & Co.]

FRANK P. SHEPARD, *Vice President*

GUARANTY COMPANY OF NEW YORK

31 Nassau Street

Cable Address, "Fidelibond"

Re: \$17,500,000 American Smelting and Refining Company 6% Cumulative
Second Preferred Stock

NEW YORK, May 21, 1930.

KUHN, LOEB & Co.,
52 William Street, New York, N. Y.

GENTLEMEN: We and our associates have purchased 175,000 shares of \$100.00 par value 6% Cumulative Second Preferred Stock of American Smelting and Refining Company at the price of \$100.00 per share flat. We hereby confirm that you have an interest of 22% on original terms in the purchase of said Preferred Stock.

We and our associates are forming a Banking and a Selling Group, of which we will be managers and in which we may participate, the former group to underwrite the sale of said Preferred Stock to the public at \$103.00 per share flat. The gross compensation of members of the Purchase Group for their services will be 75 cents per share. Advice concerning your participation and compensation in the Banking and Selling Groups will be sent you in due course.

It is to be borne in mind that the Irving Trust Company, which is not associated in this particular financing, is a member of our Group and in case any business should arise in the future in which they would wish to participate, our interests would accordingly be reduced in order to include them. We have arrived at percentages for this contingency as quoted below:

Kuhn, Loeb & Co.-----	21%	Central Hanover Bank and Trust
Guaranty Company of N. Y.---	21%	Company-----
Bankers Company of N. Y.---	16¼%	New York Trust Company-----
Chase Securities Corporation---	16¼%	Irving Trust Company-----

If the foregoing is in accordance with your understanding, will you kindly so indicate by signing the enclosed duplicate herewith and return the same to us.

Very truly yours,

GUARANTY COMPANY OF NEW YORK,
By FRANK P. SHEPARD, *Vice President*.GUARANTY COMPANY OF NEW YORK,
31 Nassau Street, New York, N. Y.

GENTLEMEN: We hereby confirm that the foregoing is in accordance with our understanding.

Very truly yours,

KUHN, LOEB & Co.
By G. W. B.

EXHIBIT No. 1851

[From the files of Kuhn, Loeb & Co.]

COPY FOR KUHN LOEB & COMPANY

MAY 21, 1930.

MR. F. H. BROWNELL,
Chairman of the Board,
120 Broadway, New York, N. Y.

DEAR MR. BROWNELL: We are enclosing prospectus of the Second Preferred Stock of the American Smelting & Refining Company which we propose to offer and advertise tomorrow at a price of 103.

You will notice that we have associated with us in this business Messrs. Kuhn, Loeb & Company with whom, I think, we have come to a satisfactory understanding as to our respective positions in American Smelting & Refining Company business.

We will do everything in our power to make this issue a successful one and one which will redound to the credit of your Company, and assure you that it is a privilege to us to be associated with this business.

Very truly yours,

J. R. SWAN, *President.*

JRS:arf.

EXHIBIT No. 1852-1

[From the files of Lehman Brothers]

Office of the President.

INDIANAPOLIS POWER & LIGHT COMPANY,
Indianapolis, Indiana, July 19, 1937.

LEHMAN BROTHERS,
One William Street, New York, N. Y.
(Attention: Mr. Robert Lehman.)

DEAR SIRS: At a meeting of the Finance Committee of Indianapolis Power & Light Company held in New York on July 15, 1937, it was decided that your firm should head the syndicate which is proposed for the purpose of refunding the Indianapolis Power & Light Company's present issue of first mortgage bonds.

Please consider this as your authority to act as our sole agent in this matter.

Very truly yours,

H. T. PRITCHARD,
(H. T. Pritchard)
President.

HTP:h.

EXHIBIT No. 1852-2

[From the files of Lehman Brothers]

SIMPSON THACHER & BARTLETT,
120 Broadway, New York, July 21, 1937.

ROBERT LEHMAN, Esq.,
Messrs. Lehman Brothers, 1 William Street,
New York, N. Y.

DEAR MR. LEHMAN: I return herewith the letter which you have received from the President of Indianapolis Power & Light Company regarding the contemplated financing by that Company, together with your proposed reply.

I beg to advise you that both letters have our approval as to form.

Very truly yours,

O. C. JOHNSTON.

(Enc.)

EXHIBIT No. 1852-3

[From the files of Lehman Brothers—Letter from Robert Lehman to H. T. Pritchard]

JULY 21, 1937.

H. T. PRITCHARD, Esq.,
Indianapolis Power & Light Company,
Indianapolis, Indiana.

DEAR MR. PRITCHARD: I beg to confirm receipt of your kind letter of July 19th informing me that it was decided at the meeting of the Finance Committee of your company that my firm should head the syndicate for the proposed financing of the Indianapolis Power & Light Company's present issue of first mortgage bonds

is gratifying to have this opportunity to serve you and your company and I want to assure you that this matter will have our most active and conscientious attention.

With kind regards, I remain

Very truly yours,

rlsmc.

EXHIBIT No. 1853

[From the files of Glore, Forgan & Co. Letter from John F. Fennelly to J. Russell Forgan]

MAY 24, 1938.

MR. J. RUSSELL FORGAN,
New York Office.

DEAR RUSS: Referring to our telephone conversation this morning regarding the Indianapolis Power & Light situation, I have talked the whole matter over with Charlie and give you herewith the following summary of his views.

Some weeks ago when Mr. Adams first approached us with regard to helping him work out the reorganization of Utilities Power & Light, he told us that he would like to have us head up the financing of Indianapolis Power & Light. We immediately told him of our commitment to Lehman Brothers and that we had already accepted a position in Lehman's group, subject to that position being satisfactory to us. He then told us that he had no intention of having Lehman head up the business, particularly since he felt it desirable to have the business managed in the middle west. He even told us he had discussed this matter with the SEC in Washington. We advised Mr. Adams that we were unwilling to do anything about this until or unless the whole matter had been straightened out with Lehman Brothers, which so far has not been accomplished.

More recently, Mr. Adams asked us if we could work out a satisfactory arrangement with Lehman Brothers, and advised us that if we could do so he was prepared to proceed immediately with the Indianapolis financing. We have told Mr. Adams that we felt it was entirely possible for us to work out such an arrangement and would proceed to do so at once. Our ideas, as you know, of a satisfactory arrangement are a joint managership account which we should head in the West and which Lehman should head in the East. Pending the reaching of such an agreement, we find ourselves in the awkward position of being unable to talk with Mr. Adams about this financing, and at the same time realizing that practically everybody in the investment business is shooting at him about it, in fact we have good reason to believe that other members of the Lehman account are working independently and actively for the business. Our sincere feeling about this matter is that if Lehman Brothers are willing to agree to a joint managership as outlined above, we can be very helpful in convincing Mr. Adams as to the desirability of proceeding at once with the business. If this is not done, we feel that Mr. Adams is likely to let the whole matter drift, at least until next fall, by which time he may have missed the opportunity to do the job under present favorable market conditions. If Lehman Brothers can not see their way clear to such an arrangement, we shall feel obliged to withdraw from their account. If we do so withdraw, we will agree with them that we will do nothing about this business, either independently or in conjunction with others, for some reasonable length of time. Our idea of a reasonable length of time would be from now until next fall, during which time Lehman Brothers would have a free hand as far as we are concerned, to proceed with their present negotiations.

If you so desire, I see no reason why you should not show this letter to any of the partners of Lehman Brothers.

Very sincerely yours,

JFF: me

P. S.—Since writing the above, I have discussed the matter further with Charlie and we have both agreed it would be dangerous to show this letter to Lehman Brothers. He agrees, however that the letter states his position exactly and that all of the matter contained herein can be used in discussing the matter with them; he is even willing to have you agree to a joint man-

agement arrangement for all future Utilities Power & Light financing if you think it desirable. He feels it is most important that Lehman give us an immediate answer on this matter because he has just had another call from Adams asking about the situation and telling him that the finance committee of the Company in Indianapolis is anxious to proceed at once and that pressure is being put on him from all directions.

If the above is not entirely clear to you, I suggest you call me on the phone tomorrow morning as soon as you have read this letter.

J. F. F.

EXHIBIT No. 1854-1

[From the files of Lehman Brothers]

JUNE 26, 1939.

Memorandum to partners:

Re: Indianapolis Power & Light Financing and future financing of subsidiary companies of Utilities Power & Light Co.

I met today with Sidney Weinberg and Howard Sachs, of Goldman, Sachs & Company, Harry Addinsell and George Woods, of the First Boston Corporation.

We made the following agreement on Indianapolis Power & Light financing:

Lehman Brothers is to head the business, handle the details in our office and negotiate the deal in behalf of themselves, Goldman, Sachs & Company and The First Boston Corporation.

In the advertising the three firms are to appear on the same line in the following order:

Lehman Brothers Goldman, Sachs & Co. The First Boston Corp.

The management compensation is to be divided as follows: 40% to Lehman Brothers, 40% to Goldman, Sachs & Company, and 20% to The First Boston Corporation. All three firms are to have equal percentages in the underwriting.

We made a similar arrangement on Utilities Power & Light Company and its subsidiaries, i. e. management compensation to be divided into 40% to Lehman Brothers, 40% to Goldman, Sachs & Company, and 20% to The First Boston Corporation.

The question of handling the details of the business in future Utilities Power & Light Company deals was not determined today and the arrangement was to be subject to the approval of the principal by Floyd Odium.

JOSEPH A. THOMAS.

EXHIBIT No. 1854-2

[From the files of Lehman Brothers]

JUNE 26, 1939.

Mr. GEORGE D. WOODS,

*The First Boston Corp., 100 Broadway,
New York, N. Y.*

DEAR GEORGE: For the sake of reducing to writing our agreement of today I am setting down below my understanding of it.

With reference to the financing or re-financing of the Indianapolis Power & Light Company, Lehman Brothers, Goldman Sachs & Company and The First Boston Corporation are to have equal percentages in the underwriting. The management compensation is to be divided—40% to Lehman Brothers, 40% to Goldman, Sachs & Company, and 20% to The First Boston Corporation.

Lehman Brothers is to handle the details of the business in their office on behalf of the three firms.

In the advertising the three firms are to appear on the same line in the following order:

LEHMAN BROTHERS GOLDMAN, SACHS & COMPANY THE FIRST BOSTON CORPORATION.

The same arrangement, with the exception of the handling of the business and the order of appearance, which I do not believe we discussed, is to carry

through, subject to Floyd Odlum's approval, on future financing for Utilities Power & Light Company and its subsidiaries.

I would appreciate your calling me so that I may be entirely clear as to our mutual understanding of the arrangement made.

We are delighted at the amicable way in which the situation worked out and look forward to a most pleasant and profitable relationship with you.

Sincerely yours,

JOSEPH A. THOMAS.

JAT: AdJ.

EXHIBIT No. 1854-3

[From the files of Lehman Brothers]

JUNE 26, 1939.

Mr. SIDNEY WEINBERG,
*Goldman Sachs & Company, 30 Pine Street,
New York, N. Y.*

DEAR SIDNEY: For the sake of reducing to writing our agreement of today, I am setting down below my understanding of it.

With reference to the financing or refinancing of Indianapolis Power & Light Company, Lehman Brothers, Goldman Sachs & Company and the First Boston Corporation are to have equal percentages in the underwriting. The management compensation is to be divided—40% to Lehman Brothers, 40% to Goldman Sachs & Company, and 20% to the First Boston Corporation.

Lehman Brothers is to handle the details of the business in their office on behalf of the three firms.

In the advertising the three firms are to appear on the same line in the following order:

LEHMAN BROTHERS GOLDMAN, SACHS & COMPANY THE FIRST BOSTON CORPORATION.

The same arrangement, with the exception of the handling of the business and the order of appearance, which I do not believe we discussed, is to carry through, subject to Floyd Odlum's approval, on future financing for Utilities Power & Light Company and its subsidiaries.

I would appreciate your calling me so that I may be entirely clear as to our mutual understanding of the arrangement made.

We are delighted at the amicable way in which the situation worked out and look forward to a most pleasant and profitable relationship with you.

Sincerely yours,

JOSEPH A. THOMAS.

JAT: AdJ.

EXHIBIT No. 1855-1

[From the files of Lehman Brothers]

EIGHTH FLOOR
ONE EXCHANGE PLACE
JERSEY CITY, N. J.

JULY 11, 1938.

Mr. ROBERT LEHMAN,
Lehman Bros., One William Street, New York City.

DEAR BOBBY: The fact that we own over 60% of the debts of Utilities Power & Light Corporation, in 77 B proceedings, I suppose in fact as well as by past indications gives us no voice in the affairs of that company or its subsidiaries.

But in fairness to myself, as well as to those who are likely to be interested in the future of the estate, I wish to point out that a number of leading houses, including Goldman, Sachs & Co., First of Boston, Dillon, Read and Lazard, had approached me prior to the summer of 1937 with respect to Indianapolis financing, and that I had told them all that I had no control over the situation, didn't believe the financing was imminent and I assumed that the first question the Indianapolis Board would have to pass on would be whether any house or houses had any preferential rights to negotiate.

Also I must say in fairness to myself that Goldman, Sachs and clients own a substantial block of securities of Utilities Power & Light Company; that the same is true of clients of White, Weld & Co.; and that Paul Shields is Chairman of the Preferred Stock Protective Committee and as such has been giving his time to the affairs of Utilities Power & Light Company, and has been helpful also in matters pertaining to the industry as a whole. The same should be said with emphasis for Sidney Weinberg.

Paul Shields has made it emphatically evident to me that he considers that his firm merits far better treatment than has been accorded it in the Underwriting Group. I don't know anything about the Group or about how interests are divided, having just returned from Europe, but I do want to say a word in behalf of Shields & Co. supported by the above recitation of facts.

I also want to say that, not only because of help given in many ways in the past, relationship between Sidney Weinberg and General Wood, one of the Atlas Directors, and also because of personal desires, I strongly hope and ask that Goldman Sachs be given full measure of satisfaction.

I am told by my office and have also been made aware of it by cables and telephone calls to Europe from a number of people that many houses think we have or should have something to do with this situation and have treated them shabbily in favor of Lehman Bros. They apparently find it hard to believe what I tell them about the business.

Sincerely,

FLOYD ODLUM.

EXHIBIT No. 1855-2.

[From the files of Lehman Brothers]

JULY 13, 1938.

Mr. FLOYD B. ODLUM,
Eighth Floor, 1 Exchange Place,
Jersey City, New Jersey.

DEAR MR. ODLUM: Your letter with reference to the Indianapolis financing, addressed to Mr. Robert Lehman, was delivered to me in the absence of Mr. Lehman. I am taking the privilege of answering inasmuch as I have been in active charge of this matter for Lehman Brothers. I am distressed that the handling of this business has caused you embarrassment. A careful review of all of the history and circumstances surrounding this transaction convinced me that our conduct with reference to this financing would not only meet with your approval but would deserve your commendation.

Our attention was called to the possibility of refinancing Indianapolis before Atlas were large owners of the debt of Utilities Power & Light. Before attempting to secure this business, we considered carefully the question of discussing it with you. We were informed and discovered that charges had been made in Court and through the newspapers that Atlas was attempting to dominate the affairs of Utilities Power & Light and its subsidiaries. We found also that these charges were untrue and that you had stated in open Court and in Court proceedings that you not only did not wish to dominate the affairs of Utilities Power & Light and its subsidiaries, but that you had actively refrained from having anything to do with the management or the affairs of this company. This was particularly impressed upon me in Washington last Friday when counsel for Atlas denied before the S. E. C. that Atlas was represented on the boards of Utilities Power & Light or any of its subsidiaries. In view of that situation, we decided it was only fair not to embarrass you or to injure the record of the Atlas Corp. in the serious Court proceedings pending by discussing the matter of financing with you. We did this even though all of us were desirous of asking your help in view of the close relationship and friendship existing between us.

We, therefore, went about the matter in a direct and independent way. We went to Indiana and approached the officers of the company. The officers had a meeting of the Board and appointed a committee to consider financing. This committee made a thorough investigation of the entire matter. It interviewed banks, insurance companies and other investment banking houses, and after such thorough investigation the Board of Directors of Indianapolis Power &

Light requested Lehman Brothers to advise the company and to form a syndicate to re-finance the outstanding 5% bonds at an opportune time. The minutes of the company bear this out.

When we found the time opportune, we so advised the company. After full negotiations with the company, its officers, its directors and the Trustee of Utilities Power & Light, we were instructed to proceed. And we have proceeded expeditiously.

Other banking houses had a similar opportunity to compete for this business. In view of all the facts, it comes as a surprise to us that after twelve months or more of negotiation, suddenly at this time when the syndicate has been formed and the registration about to become effective, complaints should be imposed upon you. We have endeavored to take care of generously in the syndicate the investment bankers whom you mention as your friends.

How anyone can possibly blame you is beyond our understanding, particularly since you have so carefully made the record clear as to your position with reference to the affairs of Utilities Power & Light and its subsidiaries. Believe me, we have done everything in our power to relieve you of any possible embarrassment. And furthermore, we sincerely believe that our record in this matter sustains your insistently stated position that you never have interfered even slightly with the business and affairs of the Utilities Power & Light Company or its subsidiaries.

Faithfully yours,

JOSEPH A. THOMAS.

JAT/r.

EXHIBIT No. 1855-3

[From the files of Lehman Brothers]

ATLAS CORPORATION,
ONE EXCHANGE PLACE,
Jersey City, N. J., July 13, 1938.

Mr. JOSEPH A. THOMAS,
c/o Lehman Brothers, 1 William Street, New York City.

DEAR MR. THOMAS: I have just received your letter of July 13th in answer to mine about Indianapolis financing.

What you say records the facts as I understand them, but it's pretty difficult for the other houses who themselves thought it proper to discuss the situation with us, to understand that you went forward in the way you did without discussing the program with us. You know we have a very heavy investment in U. P. & L. and apart from any question of management or control are naturally very interested in its affairs. Some of these other houses have investments alongside ours or are interested in the Company in different ways.

If all these houses are now satisfied with the generous treatment they have received, then the immediate embarrassment is solved for me. I know of none as of today that express to me dissatisfaction except Shields & Company. Paul Shields, as Chairman of the Preferred Stock Committee of U. P. & L. has given his time generously and I am told has even advanced substantial expense money to the Committee. It should earn for him special consideration. I do hope you will find a way to accord it to him.

Sincerely,

F. B. ODIUM.

(Pencil notation:) This has been noted by Mr. Gutman.

EXHIBIT No. 1855-4

[From the files of Lehman Brothers]

ATLAS CORPORATION,
ONE EXCHANGE PLACE,
Jersey City, N. J., July 13, 1938.

Mr. JOSEPH A. THOMAS,
c/o Lehman Brothers, 1 William Street, New York City.

DEAR MR. THOMAS: When I was in Washington last Thursday I had transmitted to me a telegram from Paul Shields which made it perfectly evident

that he is still very dissatisfied with his treatment in connection with the Indianapolis financing.

I do hope that you can get this matter straightened out with reasonable satisfaction.

Sincerely,

F. B. ODLUM.

EXHIBIT No. 1856

[From the files of Glone, Forgan & Co.]

OCTOBER 20, 1932.

TRANSCRIPTION OF MR. IGLEHART'S TELEPHONE CONVERSATION—RE NEW YORK
STATE G. & E.

I have talked with the partners here in New York and some of them in Chicago and I want to go over once again exactly what took place. On Friday afternoon at about 3:30 he came in the office (Mr. Hopson) and he went into Mr. Durell's office, and he said he had a chance to sell \$5,000,000 New York Electric & Gas bonds. Durell said to him, "Do you mean to some insurance company or investment trust?" and Hopson said, "No, I mean to some bankers". and he would give us no idea who the bankers were. Durell said "You are talking to the wrong man. Wait until I get Iglehart in here". And I came in and he said he had a chance to sell them to bankers, and did we want to make a commitment. Marshall came in while the conversation was going on and he heard him say that he had a chance to sell \$5,000,000 bonds, and in a perfectly offhand casual way he said "For Heaven's sake go ahead and sell them", which was the logical thing to say, if you ever had any dealings with Hopson. Now that gave Hopson his release. There is no question in our minds about that. I said to Mr. Hopson "I don't think you can come into this office Friday afternoon and expect us to come to a decision, and I think the least you can do, as long as we have always done this business, is to give us until Monday afternoon". He said he was sorry that he couldn't do this, as the bankers wanted to go to work on it right away. I said the bankers would wait until Monday. He said he was sorry; they wanted to do it immediately. I said "I think you ought to wait until Monday and I will call you Monday afternoon. I didn't wait until Monday afternoon; I called him at a quarter of eleven Monday morning. He said he had already committed himself.

Now we feel that if that was the case a good many conversations must have gone on beforehand. We honestly feel—I am going to be perfectly frank with you—that your having been a member of the group with us, it is a most unusual procedure and we think, frankly, a very unethical one. That is honestly the way we feel about it.

Yes, well I think that you could have found that all out had you come to us and said "He is discussing it with us".

He said that you were ready to make a commitment. Well—that is what he said. Marshall would never have made the statement he did had he not put it that way.

I don't think we wish to discuss it with him one iota. And I would like to explain how Sullivan and Cromwell got their clearance. They called us early Monday morning and said they understood that somebody else was going to be the bankers for the New York State Gas & Electric. I said "I think there is something in that." They said "Is it all right for us to go ahead". I said, "I am sorry, I can't tell you. I will let you know the moment I can". I called Hopson at a quarter of eleven and asked him to come around here. He said he was sorry, he couldn't, that he had already committed himself. There was no reason why we should keep Sullivan & Cromwell from having some law business, so they were released, and those were the conditions under which they were released.

I think that if your house had been, say, E. H. Rollins & Son, and had not been a member of this group, and you had done this business, I think that would have been one thing. But I think when you were partners of ours in the

business—to say nothing to us about the conversations—I think the least thing you could do was to tell him to take all his conversations to us, and that if we were not interested, you might be interested in the business.

That was perfectly true last July. When, since then, did he tell you that?

In August we asked him if he was ready to talk about New York State Gas & Electric. He said he would not discuss it at that time. That was the last conversation we had with him.

Before you did anything with him it would have been very much nicer had you come to us. I mean, before you had any dealings with him, I think that, as long as we had been the bankers for that business ever since it was originated, I think if you had come to us and said "Hopson wants to talk about it. Are you not interested?" I think that is the way we would have done the business. Well, you see the way he severed banking relations.

Yes, but N. W. Harris is one thing, and Harris Trust & Savings are another.

Well, if you can tell us any bankers that were doing anything in the month of July in the way of underwriting. Well, I don't know who were. Well, nobody else would have ventured it that I know of.

I think your method of checking may have been fine, in your eyes. I think the check would have been very much better had you come to your partners and asked them about it. I think that would be the real way to check. That is my feeling and the feeling of the partners here.—as long as we were partners in the business and had asked you into the business originally. I think that is an obligation.

I don't expect you to; but that is the way we do feel.

I would go in to see Forrest in Chicago. Yes, he is posted thoroughly. He knows all the details of it.

Well of course the way he freed himself was a perfectly ridiculous way. You would have done exactly what we did under similar circumstances, I think. And I do think that you should have gotten in touch with us, as long as we had originally invited you into the business and it was our business and always had been our business. How he can expect to come in late Friday afternoon and have us give him an answer in fifteen minutes.

EXHIBIT No. 1857-1

[Letter from Arthur H. Dean, Sullivan & Cromwell, to Investment Banking Section, Monopoly Study, Securities & Exchange Commission]

Cable address: "Ladycourt," New York

SULLIVAN & CROMWELL,
48 Wall Street, New York, January 5, 1940.

Re: New York State Electric and Gas Company.

Mr. PETER R. NEHEMKIS, JR.,

Special Counsel, Investment Banking Section,

Monopoly Study, Securities and Exchange Commission,

Washington, D. C.

DEAR MR. NEHEMKIS: It is my understanding that you wish to introduce into the Record of the Proceedings before the Temporary National Economic Committee copies of the following documents taken from the files of The First Boston Corporation, all of which relate to the proposed financing by New York State Electric and Gas Company:

(a) Memorandum signed by George D. Woods, dated January 25, 1937, relating to a conversation he had had with Fred S. Burroughs, Vice President of Associated Gas & Electric Company;

(b) Letter from Monroe C. Gutman of the firm of Lehman Brothers, dated January 25, 1937, addressed to George D. Woods of The First Boston Corporation to which was attached a memorandum of the same date outlining Mr. Gutman's understanding of certain conversations he had had with Mr. Woods;

(c) Letter from George D. Woods of The First Boston Corporation to Monroe C. Gutman of Lehman Brothers, dated January 29, 1937 commenting on Mr. Gutman's letter and memorandum of January 25, 1937.

Both Mr. Woods and his secretary are at present absent from the City. As counsel for The First Boston Corporation I hereby advise you that I am familiar with the documents above referred to and I am authorized on behalf of The First Boston Corporation to advise you that there will be no objection to your introduction of such documents into the Record.

I will be present in Washington on Monday and if you deem it necessary I will be glad to sign a stipulation to this effect.

Very truly yours,

ARTHUR H. DEAN.

EXHIBIT No. 1857-2

[From the files of The First Boston Corporation. Memorandum by George D. Woods]

MEMORANDUM RE: NEW YORK STATE ELECTRIC AND GAS COMPANY

About a week ago Mr. Burroughs discussed the situation with respect to this Company's financing with me at some length. Briefly, the Company has sold through an independent group of dealers approximately \$13,000,000 of First Mortgage 4% Bonds and has made delivery in the form of interim receipts. The Chase Bank, as Trustee under the First Mortgage, has thus far been unwilling to authenticate the bonds because of inability of the Company to furnish the Bank with an opinion of independent counsel as to the validity of the lien. The interim receipts call for delivery not later than January 31st of either the actual bonds or the return of the cash.

In addition, Mr. Burroughs states there is approximately \$30,000,000 worth of profitable refunding still to be done in the picture and approximately \$6,000,000 of new money is needed immediately for the construction of a new generating station and certain transmission lines. Mr. Burroughs estimates that over the next eighteen months an additional \$15,000,000 will be required to take care of the necessary construction program.

Mr. Burroughs then stated that he had been having discussions with the firm of Lehman Brothers relative to the broad problems of the Associated system and the specific problem of New York State Electric and Gas Company. He said that Lehman had evidenced a great deal of interest and had expressed a desire to be helpful. Specifically, he stated that they were desirous of joining New York State Electric and Gas underwriting group, and as a member of the group having an opportunity of conferring with Sullivan & Cromwell with respect to its problems.

I advised Mr. Burroughs that we and Glore, Forgan and Company were joint managers of the group and stated that this arrangement could not be disturbed but that I would be glad to discuss with Glore, Forgan and Company the question of including Lehman in the group in third position with no participation in the management and with an amount of bonds not greater than the participation of Glore, Forgan or ourselves. This was agreeable to Mr. Burroughs and subsequently proved agreeable to Mr. Freeman of Glore, Forgan and Company.

Mr. Gutman of Lehman Brothers telephoned to me last Friday and we confirmed this arrangement. I undertook to release Sullivan & Cromwell as the group's counsel to talk to Mr. Gutman and I have since done so.

Mr. Gutman brought up the question of the participation of his firm in all financing of Associated operating subsidiaries and asked whether there were other similar joint account arrangements and whether we would be willing to discuss his firm participating as joint manager in other accounts. I stated that so far as I knew New York State Electric and Gas Company was the only situation, where we were the head of the business, which had a joint account arrangement and I said that depending on the situation as it might exist at the time and on the wishes of the Company, there would be no reason why we should not discuss a joint management arrangement.

G. D. W.

EXHIBIT No. 1857-3

[From the files of The First Boston Corporation]
Chicago Office, 231 South La Salle Street

LEHMAN BROTHERS,
One William Street, New York, January 25th, 1937.

THE FIRST BOSTON CORPORATION,
100 Broadway, New York, N. Y.

Attention, Mr. George D. Woods.

MY DEAR MR. WOODS: I beg to attach hereto a memorandum which I have prepared, which embodies very briefly our understanding in connection with New York State Electric & Gas Corporation financing and other financing of Associated Gas & Electric.

Very truly yours,

MONROE C. GUTMAN.

MCG.MCH
Encl.

EXHIBIT No. 1857-4

[From the files of The First Boston Corporation]

JANUARY 25th, 1937.

MEMORANDUM REGARDING RELATIONSHIP OF THE FIRST BOSTON CORP. AND LEHMAN
BROTHERS IN CONNECTION WITH ASSOCIATED GAS & ELECTRIC FINANCING

With respect to all future financing for Associated Gas & Electric or its subsidiaries, the two firms are to manage such financing jointly as leaders, (details of the handling of the business to be worked out later) due recognition to be given in such financing to the obligations of The First Boston Corp. to old participants in the Chase-Harris Forbes groups in a manner satisfactory to both firms.

In connection with New York State Electric & Gas Corporation financing, The First Boston Corp. and Gloré, Forgan & Co. are to be managers; Lehman Brothers are to be offered an equal participation in amount with the above two firms, Lehman Brothers' name to appear in third place.

EXHIBIT No. 1857-5

[From the files of The First Boston Corporation]

THE FIRST BOSTON CORPORATION,
New York, N. Y., January 29, 1937.

Pencil notation: Future Financing. N. Y. State El. & Gas Corp.

LEHMAN BROTHERS,
1 William Street, New York, N. Y.

(Attention: Mr. Monroe C. Gutman.)

DEAR SIR: This will acknowledge your letter of January 25th and the enclosure all in connection with our several telephone conversations relative to Associated Gas & Electric Company matters.

The arrangement stated in the last paragraph of your memorandum is in accordance with my understanding and I have confirmed it with Gloré, Forgan & Company.

However, with respect to the first paragraph I feel that the record should clearly indicate that we are not discussing all future financing of Associated Gas & Electric Company and its subsidiaries but only that financing with respect to which Harris, Forbes & Company and/or Chase Harris Forbes Corporation have previously enjoyed the position of leadership. I would also like to add that it is my understanding that in such cases we will discuss the question of joint leadership in the light of circumstances and conditions existing at the time and provided at the time the Company requests that existing syndicate management arrangements be augmented along the lines of your memorandum.

Very truly yours,

George D. Woods.
mms.

_____. Vice President.

EXHIBIT No. 1858

[From the files of Kuhn, Loeb & Co. Memorandum by John M. Schiff]

MEMORANDUM REGARDING ARMSTRONG CORK COMPANY

Yesterday Mr. M. L. Freeman discussed with me the possibility of doing some financing for the Armstrong Cork Company, with which he has a connection. I told him that I would discuss it here in the office, and asked him to return today.

Having checked up on the Company and found that the original financing had been done by the Guaranty Company, I explained to Mr. Freeman that the Guaranty Company's successor was E. B. Smith & Co. and that naturally we did not want to poach on their preserves. However, he told me that in 1932 the Company had wanted to borrow \$2,000,000 from the Guaranty Trust Company, with whom they have an account, and that the Bank was not willing to loan them more than \$500,000 at that time. The Armstrong Cork Company was very distressed at this and later raised the money through Pittsburgh banks and therefore at present are not desirous of doing business with the Guaranty Company or their successors. Likewise, Lehman Bros. had approached the Armstrong Cork Company with the idea of buying a block of stock from them, either existing stock in the hands of present holders if they did not need new money or, if they needed new money, treasury stock. However, this did not appeal to the Company.

Mr. Freeman explained that the Company needs from five to ten million dollars for improvement to their plants and would like to issue a preferred stock. He realizes, however, that probably a preferred stock would not be feasible at this time and suggested four or five year notes convertible into stock. I told him that provided he explained in detail to the company that they were coming to us of their own free will, we should be pleased to have a talk with them if he would bring in one of their senior officers the next time he was in New York, which he agreed to do.

J. M. S.

JULY 27, 1934.

EXHIBIT No. 1859

[From the files of Kuhn, Loeb & Co. Memorandum by Jerome J. Hanaue:]

NOVEMBER 18, 1927.

Confidential.

Re: The Youngstown Sheet & Tube Co.

Mr. Seward Prosser, late in the afternoon of November 17th, telephoned to me asking whether he could come around to see me and a few minutes afterwards he came in. Mr. Prosser stated that he understood we were negotiating for the Youngstown refunding, and that he, realizing our usual practices, and our friendship for his company, felt we were negotiating under a misapprehension of the Bankers Trust Company's position; that the Youngstown Company and Mr. Campbell, the President, were the closest friends of the Bankers Trust Company, that Mr. Samuel Mather was a director of the Trust Company and it would be a great blow for the Trust Company if they should lose this business. Mr. Prosser stated that some months ago Mr. Campbell told him that he felt that he could get at least 99 for his new bonds and he then had told Mr. Campbell that if he could get such a price from bankers of high rank he, Mr. Prosser, would have to advise him to accept such an offer. Since then, however, conditions in the bond market had improved and even now the company was only getting 93; that he, Mr. Prosser, wished us to realize that the whole question between Mr. Campbell and himself had been one of price. Mr. Prosser seemed to know everything about the transaction including such facts as that the Advisory Committee had been to New York negotiating it and that it had been originally suggested to us by an intermediary who knew someone in our office. In reply I told Mr. Prosser that this matter had been suggested to us originally many months ago by an intermediary and we had at first ridiculed the suggestion, saying to the intermediary that the Bankers Trust Company was the banker of the Youngstown Company. The intermediary insisted that this was not so and that Mr. Campbell would like to do the business with us. We declined to discuss the matter any further with the intermediary and stated that we could only consider the matter if these things were stated to us direct by Mr. Campbell.

Mr. Campbell did come in to see us about three weeks ago, together with Mr. Morris, the Vice President of the Company. The very first thing I said to Mr. Campbell was, "How about your relations with the Bankers Trust Company? Aren't they your bankers? They are very good friends of ours and it is our principle not to interfere with the established relations of our good friends. We would of course be pleased to make a connection with the Youngstown Company; that we had felt that way ever since we had had negotiations some years ago for a merger of the Independent Steel Company and that if he wanted us in the picture we would be glad to do the business with the Bankers Trust Company." Mr. Campbell replied that he had no commitment of any kind to the Bankers Trust Company and that he had told Mr. Prosser some time ago that he intended to make this transaction with others. I had not asked Mr. Campbell for his reasons for this but it developed in the ensuing course of the conversation that an element in it appeared to be Mr. Campbell's desire to make a transaction which would fit in with the possible later merger with the Inland Company. The question of price came up at this first conference and I replied that it was not possible to mention any price until we knew the character of the security the company was willing to make; that we could help them make a bond which would sell very high or we could sell a debenture or anything in between, and I particularly stressed the point that we would not enter into competition with others for the bonds. This first negotiation had been followed by several weeks of intense work (Mr. Prosser here said that they also had been working on it for some time) and that now we had made a transaction subject to the approval of the Board and that we were committed and could not withdraw even if we desired to. Mr. Prosser was entirely familiar with the fact that the Board meeting was to take place this Friday morning. I further stated to Mr. Prosser that what Mr. Campbell had said to us was confirmed by the fact that we had only recently heard that their group had been dissolved and that one of their members had independently tried to get the business or to get in with whoever would get the business. (Mr. Prosser here said that this was not correct, that their group was intact and had had recent meetings.) I further told Mr. Prosser that we had discussed among the partners the question of whether we could not, in some way, offer them a share in the business, but Mr. Prosser immediately said that while that was very nice of us he could not consider that.

Mr. Schiff came in to the room at about this time and most of what was said above was repeated on both sides—Mr. Prosser emphasizing what a blow it would be to his Trust Company to lose this business and Mr. Schiff emphasizing how we had made every effort to be sure that we were not competing with them. I stated that while we never competed for business, we of course could not take the position that if a corporation came to us and told us they were free that we would not deal with them. Mr. Prosser then stated that he now understood our position and wished to say that he felt that they had no grievance against us; that what Mr. Campbell had said was exactly correct, but that Mr. Campbell had evidently remained under the impression that they would not pay higher now than they had suggested many months ago and that he felt that if he sold under 99 he should have come back to them. Mr. Schiff said to Mr. Prosser just before he left, "Think the matter over over-night and perhaps you can make some suggestion tomorrow which will be satisfactory all around."

Immediately after the conference I repeated the substance of it to Mr. Morris, the Vice President of the Youngstown Company, who was at the time still in our office. He assured me that outside of any conversations Mr. Campbell may have had with Mr. Prosser they had had no negotiations and certainly that no work had been done in endeavoring to work out a plan or a mortgage. This morning, after consultation among the partners, I telephoned to Mr. Morris that while we would, of course, prefer to do the business alone, we did not wish to do anything to embarrass Mr. Campbell in any way and if Mr. Campbell desired us to do so we would be willing to offer one-half of the business to the Bankers Trust Company. Mr. Morris, without leaving the telephone, said that he had repeated to Mr. Campbell the substance of what I had told him about Mr. Prosser's visit, and that Mr. Campbell was very much incensed about Mr. Prosser's coming to see us with any such statement and that the only way Mr. Prosser knew about the price was that Mr. Campbell had yesterday telephoned to Mr. Prosser informing him that he had closed with us at 98, possibly speaking to him about the Trusteeship.

J. J. H.

JJH/MC.
11/18/27.

On the morning of Monday, November 21st, I called on Mr. Prosser together with Mr. Morris. It was first arranged that the Bankers Trust Company would accept Trusteeship of the new mortgage and then Mr. Morris left and I told Mr. Prosser that we were going ahead with the offer promptly and offered to him, for his group, a one-half interest in name, subject to the usual management charge, or a one-third silent interest. He immediately replied that he did not see how he could accept but he appreciated our offer, and that he would consult the group and let us have an answer promptly. Shortly thereafter he telephoned to me asking me for the prices at which we expected to syndicate and sell the bonds, which I gave him and a little later he telephoned again to say that it had been decided that they could not participate as a group.

After this Mr. McElowney of the Union Trust of Pittsburgh telephoned to say that if we would make him the same offer as we had made Mr. Prosser for a \$10,000,000 participation in the business they would like to take it and we later in the day arranged with him to give him a participation of \$7,500,000.

We suggested to the National City Company (Mr. Davis) That they participate silently in response to which invitation Mr. Hugh Baker later telephoned to George Bovenizer that they felt that under the circumstances they could not accept the participation and they greatly regretted that they had to give up the opportunity of making a nice profit. We offered a participation also to the Guaranty Company (Mr. Harrison) and Mr. Stanley telephoned to me that they didn't feel that they could go along. We offered the Continental and Commercial Co. of Chicago a participation through their New York representative but they also felt that they could not accept it.

J. J. H.

11/23/27.

NOTE.—Portion set in line type crossed out on original.

Re: Youngstown.

FRIDAY, NOVEMBER 18TH.

At about 5:00 o'clock P. M. today Mr. James A. Campbell called me on the telephone and said about as follows:

"In reference to the message through Mr. Morris, I want to tell you exactly what happened with the Bankers Trust Company. They came to us first several months ago and said that there was a good opportunity for us to sell a 5% bond to refund our other indebtedness and bid 94½. This did not interest me. A couple of months later they came again and said that the bond market was better and that they could pay 95¼ and then a month or so afterwards bid 95¾. Then I got sore and read the riot act to them and I hoped that they would respond. That they did not do. This man Freeman had been in and said he thought he could get 99 or par from responsible people; but we paid no attention to him; then when the Bankers Trust Company did not respond, we listened to Freeman. Then again, talked with Tilney and again read the riot act. Several weeks elapsed and we heard nothing from them and I felt that they had had every opportunity. We then went in to see you and you told us you wanted us to fix the type of bond first and from then we felt hitched to you until the matter had been decided. Last Tuesday afternoon, after the meeting of the Advisory Committee with you, I ran into Seward Prosser and told him the whole story except price. He only said he was disappointed. I told him we hoped to make him Trustee. I also told him that you had suggested taking them along in the business, to which he replied that if it was good for part it was good for all. Then yesterday, after we had decided the matter among ourselves and notified you that we would sell you 50-Year Bonds, he insisted that we give him the bonds at the same price. I refused saying my word is better than my bond. I called up Dalton who agreed with me and who called up Prosser and told him so. A Vice President of the Guaranty Trust Company said that we (Youngstown) did not know how to sell bonds, that we should have offered the bonds at 97½ or 98 but I felt that they should have done the best they could for us and not try to buy them as cheaply as they could. I would rather resign than break my word. There was no question with the Board of Directors, it was unanimous.

About their participating, that is up to you. They had their day in court. We would of course be pleased if you did so, as we are not angry with them. They are good friends and there are a lot of influential people connected with the Company—Morgans and others—but that matter is entirely up to you."

J. J. H.

JJH: MC.

EXHIBIT No. 1860

[From the files of Smith, Barney & Co. Diary entries by J. N. L. (J. N. Land) J. W. C. (J. W. Cutler), K. W. (Karl Welsheit) and E. W. (E. Wels)]

ARMSTRONG CORK COMPANY

Guaranty Company headed note financing done for this Company several years ago. JRS and CSC to make trip to Lancaster. JNL—10/22/34.

Discussed with J. R. S. feasibility of using excess cash to redeem the debentures and refunding balance with short term notes but it was felt we would not be warranted in making the suggestion to the company. KW—11/14/34.

Mr. Suter and Mr. Powlison of this Company met with JWC, BW and KW at this office 12/5/34 and told us they had been thinking about some sort of refunding operation in connection with their outstanding debentures. We are to give them our ideas as to what we think could be done on various serial and longer term note issues. KW—12/7/34.

Discussed Armstrong Cork with Passmore 12/10/34. He was very strong in his opinion that company should not put out bonds maturing serially. Said that if Company should put out such bonds and then come to him for a bank loan, the serial maturities would loom very large in his mind as an adverse factor. The only way we can see that the Co. could save money by refunding would be to put out one, two, three and four year serial notes. Even on this basis the savings for the four years would apparently not be greater than \$50,000 to \$75,000 total, after paying expenses and paying us one point for handling the business. JNL—12/12/34.

Mr. Prentis and Mr. Suter had lunch with JWC and myself yesterday. We told Mr. Prentis and Mr. Suter:

1. that a short serial issue could be placed privately on a basis which would show the Company a moderate amount of interest savings but we could not advise their doing this because it would place on them a heavy burden of fixed serial maturities;
2. that we did not believe it would be possible to place privately a ten or fifteen year issue in the amount of \$10,000,000 or \$12,000,000;
3. that we considered it impossible to put out a ten or fifteen year issue at a price which would save the Company money for the next five and one-half years;
4. that a ten or fifteen year debenture issue convertible into common stock on a scale beginning at 30 could be successfully marketed, if registered, at slightly over a $4\frac{1}{2}\%$ basis and that our compensation for handling such an issue should probably be nearer four points than three points, exclusive of legal expenses; and
5. that we hardly thought the time had arrived when a preferred stock issue could be placed successfully.

Mr. Prentis made it clear that he was not in favor of putting out short-term serial maturities and the only thing he might consider would be to put out a ten or fifteen year bond issue or preferred stock issue provided this could be done on a basis which would either save money or at least not lose much money and provided further that the issue could be made without having to comply with present very burdensome registration requirements. We told Mr. Prentis that we were hopeful that registration requirements for new issues would be greatly simplified in the near future. It was agreed that both the Company and we would continue to keep their problem in mind and particularly make a point of giving fresh consideration to it if and when registration requirements are made less burdensome. Mr. Prentis invited JWC and myself to visit them at Lancaster and we are planning to do this some time in January. JNL—12/21/34.

Lewis Strauss of KL told JRS and myself 3/14/35 that they had this business, and he asked if we would be interested in joining them. We explained that this was an old account of ours and we believed it was still ours, but it was kind of him to think of us and we would like to consider the situation. I subsequently talked to Roy Passmore at the Bank, who said that he had been in conversation with officers of the Company within the last thirty days and felt very sure that there was nothing in KL's contention, and that the Company would not do any-

thing without discussing the matter with them at the Trust Co. first, and that he could not believe they would accept any other offer without giving us a chance. I suggested it might be well for us to take a day and run down to Lancaster to see the plant, and he thought this would do no harm. JWC—3/19/35.

JRS and I talked to Strauss of KL&Co. and told him that we believed Armstrong to be our business and that when something could be done they would look to us. Strauss said if that were so KL would not compete, and that he would so inform the Armstrong people. If they really wish to make a change and clear with us, KL will then be willing to talk to them. We indicated that if and when the business would be done we would have a place for them. JWC—3/20/35.

Talked with Mr. Suter at Lancaster re going down to see the plant. Said in answer to his inquiry we did not feel he had a definite program to offer but would be glad to continue our discussions of several months ago. Both Mr. Suter and Mr. Prentis were going to be away after their meeting Monday and Tuesday of next week, and therefore, Suter suggested coming down the following week. Meanwhile he said he would as Mr. Powlison, who is in the New York office, to come in and see us tomorrow. JWC—3/21/35.

Heard again from Suter and have made appointment to see him in Lancaster Wednesday morning April 3rd. JWC—3/29/35.

Tried to get RC Jr or CSC to make trip with me but impossible on account previous engagements, so JNL and I plan to go and meet Mr. Suter as arranged. JWC—4/2/35.

JWC and JNL called on Co's officials in Lancaster 4/3/35. Discussed refunding with 4% debts, or pfd. See letter in Buying Dept. file dated 4/4/35 for outline of plans discussed. Suter said Co. had not done any shopping around. Said further there was difference of opinion in their own organization as to whether they should do refunding. Requested us to furnish computations on both 4% debts, and pfd. and said they would have further discussions as to whether they should do refunding and if so whether they should do it with debts, or pfd. Their audited figures for 12/31/34 will not be available much before June 1 due to length of time required to get statements from foreign subs. JNL—4/6/35.

JWC called Suter today. Suter said he had been so busy since getting back last Thursday that he had not had a chance to study our calculations. He said also that he might be in New York Thursday or Friday of this week. JNL—4/23/35.

Lewis Strauss called JRS, said Suter had been in to see him when he was in New York the end of last week and that he had told Suter of his conversation with us. Suter had also been to the Guaranty and talked with Passmore, who said that he felt sure if they were considering immediate action Suter would have spoken to him about it. JWC—5/1/35.

Suter and Powlison came in today and J. W. C. and J. N. L. talked with them. We said if an attractive conversion privilege were given we thought 15 year 4s could be sold around par. A week ago a conversion price of 32½ would have been attractive; because of a recent break in market such price would not now be particularly attractive, but by the time business could be done it might very well again become attractive. We said we thought a non-convertible 15 year 4 might be saleable around 96½ to the public under today's conditions. In referring to spread we mentioned three points. Suter not inclined personally toward preferred stock but asked our ideas because he said Prentis had been interested in preferred. We said we thought a 5% preferred carrying a conversion at a price 10 points or so above the market would be saleable around 99 to 100. Spread on such an issue we thought would have to be 4 points. Prentis has been abroad for several months and will not be back until June 13. Suter indicated they would probably await his return before reaching a decision even though this should result in their not being able to file by June 30. JNL—6/3/35.

Reported to L. Strauss 6/10 our last conversation with Suter, etc. Strauss said he had not seen him recently and believed he had reported to us each and every time the Company had said anything to them. JWC—6/13/35.

We headed group which offered publicly \$9,000,000 15-Year 4% Debts. Our participation in underwriting 40%, \$3,600,000; others in group included Kidder Peabody & Co. \$1,800,000; Lazard Freres & Co. Inc., \$1,800,000; Kuhn Loeb & Co. \$1,800,000 (non-appearing). EW—7/24/35.

EXHIBIT No. 1861

[From the files of Smith, Barney & Co.]

Outline of Guaranty Company of New York's relationship to public financing of The American Rolling Mill Company

Offering Date	Issue	Order of Appearance in Advertising and Interests on Original Terms	Gross Spread
Jan. 5, 1923	\$7,000,000 Fifteen-Year S. F. 6% Gold Notes due Jan. 1, 1938 (this issue was called for payment July 1, 1928.)	Guaranty Co. 30%; Kidder Peabody (who apparently brought the business to Guaranty Co. but reserved the right to handle the books, which they did on this and the next piece of business listed hereon) 33½%; W. E. Hutton & Co. 30%; Marshall Field, Glore Ward & Co. 6¼%.	4½ pts.
Jan. 8, 1923	\$7,000,000 Cum. 7% Pref. Stk. (this issue was called for payment April 1, 1928.)	Guaranty Co. 30%; Kidder Peabody (who handled the books) 33½%; W. E. Hutton & Co. 30%; Marshall Field, Glore Ward & Co. 6¼%.	5½ pts. (?)
Jan. 9, 1928	\$25,000,000 5% S. F. Gold Debentures due 1948. ¹	Harris Forbes 7%; W. E. Hutton & Co. 7%; Guaranty Co. 10%; Kidder Peabody 7%; Union Trust of Pittsburgh 7%; Field Glore & Co. 7%.	4 pts.
Oct. 20, 1930	\$15,000,000 Three-Year 4½% Gold Notes due Nov. 1, 1933 (this issue was refinanced principally by giving holders new 5% Convertible Notes due 1938).	Guaranty Co. 30%; Chase Securities Corp. 20%; National City Co. 10%; W. E. Hutton & Co. 30%; Union Trust of Pittsburgh 5%; Mellon National (non-appearing) 5%; Kidder Peabody; Field Glore & Co. Latter two appeared because they elected to do so, but neither had any interest in purchase group because Chase, National City and the two Pittsburgh banks had been included since Guaranty Co. had previously headed the business and therefore purchase group in this piece of business was filled.	1.75 pts.
July 21, 1933	\$13,992,000 5% Convertible Notes due Nov. 1, 1938.	Pursuant to the terms of a Plan and Deposit Agreement dated July 21, 1933, these Notes were offered in exchange, par for par, for the Company's 4½% Gold Notes due November 1, 1933, which were outstanding in the amount of \$18,992,000 as of July 21, 1933 and which could not be refunded in the usual manner nor paid at maturity. The Company paid no commissions or other remuneration to bankers or dealers to solicit deposits, but in May, June, and July 1933 various methods for meeting the Nov. 1, 1933 maturity were discussed with Guaranty Co., which in turn had several conversations with Chase Harris Forbes, National City Company, W. E. Hutton & Co. and Union Trust of Pittsburgh. Guaranty Co. did a considerable amount of work in connection with investigating the Company, determining terms of Plan, and preparing necessary papers (such as indenture, etc.) called for by the Plan.	None.

W. W.
February 4, 1935.

¹ Harris Forbes apparently got this piece of business because they had a director on the Board and had the assistance of the National Bank of Commerce in New York (which was the original trustee). Union Trust of Pittsburgh was included because of its interest in Columbia Steel Co. which had been recently purchased by American Rolling Mills. Guaranty Co. was originally offered an appearing position, with a 6% interest in banking group, but no position in origination. After J. R. S. talked to Harris Forbes, they gave Guaranty Co. 10% in origination; 6% in banking group and 4% in selling group. Harris Forbes also agreed to take care of Kidder Peabody and Field, Glore & Co. separately, which took care of Guaranty Co.'s obligation to them.

EXHIBIT No. 1862-1

[From the files of Smith, Barney & Co.]

DECEMBER 16, 1937.

Memorandum for Mr. J. W. Cutler

DOW CHEMICAL COMPANY

Fred Kraye informed me today that he had been approached by Wertheim & Co. to form a joint account to buy rights to subscribe to this company's preferred stock with the idea of subscribing for the stock and marketing it. Recognizing us as the company's bankers, he had told Wertheim & Co. that Brown Harriman

would do nothing without first talking to us and therefore wanted to know (1) whether we wanted to join Brown Harriman and Wertheim in such a joint account, (2) if we did not want to go along, did we have any objection to their approaching the large stockholders with the idea of making a bid for their rights, or (3) did we prefer that they take no action whatever.

After discussing the matter with JWC, CWK and Hamilton Wilson, who discussed the whole story with Mr. Dow, I informed FK that Mr. Dow had told us that he had received many letters from brokers who had common stock in their names and were endeavoring to acquire additional rights to which he had replied that he knew of no blocks of rights that were available for sale, that he and Mrs. Dow (his mother) had not yet made up their minds what they were going to do with their rights but that when they were ready to take any action they would surely talk to us about it. Also told FK that under the circumstances we did not want to do anything about the matter at this time and that, of course, if they wished to approach the large stockholders we could not very well object, although we did not think it would do them any good.

After some further discussion, FK said that under all the circumstances they would do nothing about it but asked that, if we did acquire any stock for sale and wanted a partner, we bear them in mind, and I told him that I would make a note of the interest they had expressed.

DPWG&R are of the opinion that any group acquiring rights and subscribing for the preferred stock with the idea of distribution would become underwriters under the Securities Act and no action in connection with the purchase and sale of any of this stock or rights should be taken without thorough discussion with DPWG&R. CWK is familiar with all details in connection with this matter.

K. WEISHEIT.

KW:HBM

Copies to: Mr. Hamilton Wilson
Mr. Webb Wilson
Miss Wels

EXHIBIT No. 1862-2

[From the files of Smith, Barney & Co.]

Vault #7

Memorandum for Files.

JULY 23, 1935.

IN RE: PURT OIL COMPANY

JRS and CSC called on Henry Dawes in Chicago on October 22, 1934, and discussed generally with him the possibilities of doing a refunding job when market conditions warranted. In view of the fact that Edward B. Smith & Co. had inherited the Guaranty Company's position, we stated to Mr. Dawes that we felt we should be given first consideration. Mr. Dawes said that it was too early to discuss the matter but that he appreciated our stopping in and that he would let us know whenever he had anything to talk about.

Rawleigh Warner, Vice President of the Company, called on January 3 and discussed with JRS and CSC the possibility of funding the bank loans and their outstanding debenture issues. On the same date Henry Dawes sent JRS a letter from a promoter by the name of M. L. Freeman stating that he felt he could place privately for the company \$19,000,000 to \$20,000,000 of 4¼% notes at 98. JRS advised Dawes we doubted Freeman's ability to accomplish any such thing but that if Dawes desired to have Edward B. Smith discuss the matter with Freeman, we would be glad to do so.

On January 10, CSC called on Mr. Dawes and Mr. Warner in Chicago and they advised him that they were not interested in dealing with Freeman but would like to have us bear in mind the possibility of selling a convertible note issue.

On February 13 Henry Dawes stopped in the New York office and saw Burnett Walker and C. L. Austin. He said he was going to Bermuda and suggested that we discuss the matter of refunding with Mr. Warner. B. W. advised him that CSC would be in Chicago the following week and would take the matter up with Mr. Warner and stressed the necessity of our insisting upon having an independent examination and report of the properties. This seemed agreeable to Mr. Dawes who advised that we obtain someone not affiliated with his competitors.

On February 18 and 19 CSC had several long discussions with Warner in Chicago regarding their refunding plans. He, Warner, was anxious for us to proceed with our investigation. CSC advised him that he would communicate with him not later than the first week in March.

Upon CSC's return to New York he discussed with JRS the possibility of locating the right man to make such an investigation. CSC when in Philadelphia talked three or four times with Mr. J. Howard Pew, President of Sun Oil Company, and Mr. J. N. Pew, Vice President, both of whom hold large interests in the common stock of the Pure Oil Company, as to the advisability of Edward B. Smith & Co. doing a financing job for the Pure Oil Company. Mr. J. Howard Pew felt that if we could satisfy ourselves on the marketing end of their business and the facts as to rumors that some of the junior officers were getting a split from operations of some of the subsidiary companies, he felt that we would be perfectly justified in offering to the public bonds of this company. He felt that Pure Oil Company had very fine producing properties, in fact he went so far as to say that he believed Standard Oil of Indiana would be glad to pay an amount considerably in excess of the Company's total outstanding funded debt and stock and intimated that they might pay as high as \$100,000,000 for the producing properties alone. CSC then asked him who he thought we could get to make a report on the company. Mr. J. Howard Pew and Mr. J. N. Pew gave the matter considerable thought and suggested a man by the name of Murray M. Doan, formerly with the Gulf Oil Company, for production, Mr. Primrose for refining and Paul Blazer for marketing. These names were given to Mr. Warner and he said he would consider them.

Mr. Warner then discussed the possibility of refunding only one issue, \$13,500,000 bonds due in 1937, leaving the other issue outstanding. CSC said this would not leave the company in proper shape and felt the whole job should be done simultaneously. This conversation took place on March 4.

CSC further discussed the matter with JRS who took up the question of a man to report on the Company with Mr. Morris Kellogg, of the Kellogg Manufacturing Company, who suggested the name of R. C. Holmes, formerly President of the Texas Company. CSC checked with Mr. J. Howard Pew and Mr. Van Dyke, of the Atlantic Refining Company. The latter gave Mr. Holmes a very good recommendation while Mr. Pew stated that in his opinion there was nobody better qualified to give such a report who was available and not connected with any competing company. He said he could not understand why he had not thought of him and we should consider ourselves very very lucky if we could get Mr. Holmes to make the report. JRS and CSC took the matter up with Mr. Luther Cleveland, of the Guaranty Trust Company whose connections with the Texas Company are very close, and while he was not as enthusiastic about Mr. Holmes as Mr. Pew he did admit he knew the oil business. We then suggested to Mr. Dawes and Mr. Warner that we use Mr. Holmes to do this work and they both agreed immediately that we could not get a better man. Mr. Holmes was sent for by Mr. Dawes and agreed to make such a report.

Mr. Holmes went to Chicago about the middle of May and after ten days to two weeks intensive work in the Company's office wrote a report dated May 25. Mr. Holmes told us that his investigation had thoroughly convinced him that the Company had an excellent future, that it had already definitely turned the corner and that he had confidence in it as a profitable going concern at the present time. Shortly thereafter Mr. Holmes came on to New York at CSC's request to lunch with JRS, RC, JR, CSC, BW, Mr. Addinsell and Mr. Leness of the First Boston Corporation. We asked Mr. Holmes many questions about the company and all agreed that we were satisfied after talking to Mr. Holmes that it was proper for us to form a group to do the financing.

In addition, Mr. Addinsell obtained a check on the company from Mr. Sherrill Smith, of the Chase Bank, and advised CSC the check was a very satisfactory one.

JRS and CSC went to Chicago the first week of June and discussed with Mr. Dawes and Mr. Warner the other houses to be included in the underwriting. It was finally agreed to ask The First Boston Corporation, Halsey Stuart, Field Glore, Blyth and Central Republic. Dillon Read were also discussed. BW talked with Mr. Forrestal of Dillon Read who stated that they were not inclined to go along in any deals unless they had a very substantial interest. We advised them that their interest would not be more than 15% and they finally turned the deal down, partly because of this account and partly because they felt they wanted their own independent engineer to check the property which we advised them could not be done.

Blyth & Co. had made repeated calls on the company asking to do the business. When Mr. Lieb was approached by JRS he said they appreciated being asked in the deal and was sorry they were not offered more than 9%. He took the matter up with his partners and three or four days later reported that unless they could have a report by their own engineer they would not wish to go along as they questioned the "present management".

After a further discussion with Mr. Warner and Mr. Dawes, Kidder Peabody, who had made many requests to get into the business, were invited to take Blyth & Co.'s position and accepted.

Following the receipt of Mr. Holmes report dated May 25, a copy of which accompanies this memorandum in the file, CLA went to Chicago, arriving there Monday, June 3rd, for the purpose of making a further investigation of The Pure Oil Company and for checking the Company's Registration Statement and Prospectus in connection with the note issue, which documents were at that time in course of preparation. Mr. L. H. Coleman, a partner of Davis Polk Wardwell Gardiner & Reed joined CLA in Chicago on Wednesday, June 5. In turn, Coleman was joined by Mr. Frederick Sheffield of his office. Sheffield was later replaced by Mr. Edward Wardwell Jr. With these assistants, Coleman worked with us until the conclusion of the issue. Sherlock Hibbs of our office joined CLA in Chicago on June 10 and remained until the conclusion of the issue.

Our first steps in Chicago, aside from a preliminary review of the progress of Registration Statement, were to discuss with the Company officials, particularly Mr. Arthur Brereton, Comptroller, a list of questions in connection with the Company and its operations, which we felt were supplemental to the information required for the Registration Statement and which it was desirable to have answered in order to more completely inform us as to the facts of the Company's operations. A copy of this questionnaire with answers submitted by the Company and other supplemental information received from the Company accompanies this memorandum in the file.

During the first few days in Chicago we also obtained from the Company a comparative summary of earnings for the four months ended April 30, 1934, and for the same period of 1935. A copy of this comparison with notes taken during a conversation with Mr. Brereton accompanies this memorandum in the file. From the 5th of June, intensively, through until the 26th of June, Counsel and ourselves worked on the Registration Statement, checking by question and answer and by cross use of information, statements made therein with regard not only for the accuracy of such statements as were made but also as regards clarity, omissions, etc.

The following outline takes up each item of the Registration Statement by number with particular comments which might be constructive as to the record of the investigation:

Item 1. Nothing.

Item 2. Nothing.

Item 3. Checked by Counsel.

Item 4. This item was checked by Counsel against minute books of Company and subsidiaries and considerable time was spent by all of us in talking with Messrs. Brereton, Harvey (office Counsel), Bailey (Assistant Comptroller) and Mulligan (Assistant Secretary in charge of subsidiary records). Substantial revisions were made in the list of subsidiaries and in the footnotes on account of our check, such revisions including particularly the inclusion of inactive companies and footnotes explaining defaults in preferred dividend payments.

Item 5. This item was entirely revised by us in the light of available information in written and verbal form.

Item 6. This item was materially expanded, revised and corrected by us after discussions not only with Messrs. Brereton and Bailey but also Messrs. Warner, Westcoat, Irwin and Harvey, also the man in charge of the Company's Map Room.

Item 7. Same as item 6.

Item 8. This item was checked in detail particularly with Mr. Harvey and the department head in charge of pipe line right-of-way.

Item 9. This item was checked carefully with the financial officers of the Company particularly in respect of footnotes by Counsel and ourselves.

Item 10. Same as item 9.

Item 11. We were flatly informed by officials of the Company that there were no such guarantees, furthermore any such guarantees would have been indicated by Messrs. Arthur Andersen & Co.

- Item 12a. We were flatly informed by officials of the Company that there had been no warrants or rights granted.
- Item 12b. No investigation required.
- Item 13. No investigation required.
- Item 14. Checked by counsel.
- Item 15. Same as Item 14, except as to (k) and (l) which are entirely on responsibility of the Company.
- Item 16. Same as Item 14.
- Item 17. Same as Item 14.
- Item 18. See Item 11.
- Item 19. See Item 13.
- Item 20. No investigation required.
- Item 21. Checked by counsel.
- Item 22. Information furnished separately by each underwriter.
- Item 23. Checked by counsel.
- Item 24. No checking required.
- Item 25. Checked by counsel.
- Item 26. No checking required.
- Item 27. Checked originally by counsel with Brereton and re-checked by counsel.
- Item 28. We double checked this item.
- Item 29. Not applicable.
- Item 30. Not necessary to check.
- Item 31. Discussed this answer with Brereton and Bailey.
- Item 32. Discussed this answer with Warner, Brereton, Bailey and Harvey.
- Item 33. No further check possible.
- Item 34. No further check possible. Information as regards underwriters furnished separately by them through us.
- Item 35. Discussed this question fully with Warner, Westcoat, Brereton, Bailey and Harvey.
- Item 36. No further check considered necessary. We did not go to Company's private payroll books.
- Item 37. Discussed this question in connection with Arthur Andersen and Company decided inasmuch as their compensation was under \$20,000 for the year, even though expenses brought the disbursement to them above that amount, it was not necessary to refer to them.
- Item 38. Discussed generally with financial officers of the Company.
- Item 39. Discussed this question with financial officers of the Company.
- Item 40. The answer to this question was prepared by Mr. Harvey and was discussed at length by our counsel and ourselves with Harvey, Warner and Brereton. Copy of letter from Texas counsel addressed to the Company will be placed in this file.
- Item 41. Considerable time was spent on the answer to this item, not only by the writer in consultation with Harvey and financial Officers of the Company but also by counsel. In addition, Sheffield and Wardwell read all pertinent contracts carefully and went through the minute books of the Company and subsidiaries to check the completeness of the answer. Many corrections were made to the summaries of contracts by counsel and ourselves by reason of reference to the contracts themselves, and from our discussions and checkings we had every reason to believe that all material contracts had been summarized.
- Item 42. Not applicable.
- Item 43. Did not check this except as it applied to ourselves.
- Item 44. We received direct verbal answer as to item 44 from Harvey but did not further check this item.
- Item 45. This item was checked by Messrs. Arthur Andersen & Co., a letter from them thereon to the Company, dated June 26, 1935, being included in this file.
- Item 46. Discussed this matter with Garrett Burns, partner of Arthur Andersen & Co.
- Item 47. This question was discussed as to completeness and accuracy with H. M. Dawes, Warner, Westcoat, Brereton and Harvey, each one of whom told us they could think of nothing more that should go in this item as regards an adequate and complete disclosure. The possibility of having Mattison and Davey, independent tax counsel, qualify as experts as to statements on the income tax situation was discussed and the conclusion was reached by ourselves and counsel that this was not necessary and would add very little in actual effect.

Financial Statements. Except for presentation, clarity and completeness of footnotes, upon which we spent considerable time, we relied entirely upon Messrs. Arthur Andersen & Co., although we discussed at length with Garrett Burns, partner, and Martin, associate, of Arthur Andersen & Co., accounting principles used by the Company and questions of presentation. We were entirely satisfied that the financial picture was properly presented and that accounting principles followed were sound.

Work was begun on the prospectus a week or ten days prior to the filing of the Registration Statement. We considered carefully with the Company what portions of the Registration Statement were required by regulation to go into the prospectus and also what other portions it was advisable to include from the point of view of completeness of information.

In addition to information taken from the Registration Statement and included in the prospectus there are three main headings in the prospectus which are in addition to information included in the Registration Statement. These are the captions "Earnings", "Working Capital" and "Depreciation and Depletion Policies".

We had previously requested the Company to prepare five months earnings figures for 1935 in comparison with such figures for the same period of 1934 and to have the figures reviewed to the greatest extent possible by Arthur Andersen & Co. Both the Company and Arthur Andersen & Co. came to the conclusion that it was not feasible to show earnings for five months of 1934 on a basis comparable to 1935 without undue delay, so such figures were dropped from consideration. An audit of the 1935 figures was discussed but it was agreed by Arthur Andersen & Co., the Company and ourselves that it was unnecessary and impracticable from the standpoint of time and organization.

When the 1935 figures were completed we discussed them at length with the Company and with Messrs. Burns and Martin of Arthur Andersen & Co. We had been most concerned about the portion of the five months earnings which might prove to have accrued by reason of the increase in crude oil inventories during the period. CLA felt that this figure might run to as much as \$600,000 to \$700,000 but when the figures came to hand we were assured by both the Company and Arthur Andersen & Co. that this question had been thoroughly investigated and that the figure of approximately \$300,000 as shown in the prospectus was correct. We endeavored to show in the prospectus as clearly as possible the main reasons why the 1935 earnings were so substantially better than the previous year. Such reasons were set forth to be the development of the Bosco pool, lower dry hole costs and exploration expense, and the inventory profit above mentioned in the amount of approximately \$300,000. The summary of earnings as set up in the prospectus was checked carefully by Arthur Andersen & Co. as confirmed in their letter to us dated July 26, 1935 and made a part of this file.

The computation of annual interest requirements was made up in the Treasurer's Department of the Company and checked by Mr. Rawleigh Warner in the presence of CLA.

The pro forma current position shown in the prospectus was based on the balance sheet which had been checked to the extent possible by Messrs. Arthur Andersen & Co. and their letter of July 18, 1935, made a part of this file, sets forth their check of the presentation.

The review which Arthur Andersen & Co. made of the consolidated balance sheet of the Company and subsidiaries as of May 31, 1935 and of the income statement and summary of surplus for the five months ended that date is covered in their letter to us dated July 13, 1935, made a part of this file.

Item 45 of the Registration Statement, as partially included on pages 18, 19, 20 and 21 of the Prospectus, was reviewed by Martin of Arthur Andersen & Co. who considered it to properly and adequately set forth the facts. (Note above on item 45 of the Registration Statement). The section on depreciation and depletion policy included in the prospectus was checked by Mr. Wiley of The Pure Oil Company and also by Mr. Brereton. CLA further asked Mr. Warner if, in his opinion, it clearly set forth the facts and that there was no special retirement policy of the Company which should be mentioned therein, obtaining a satisfactory answer to such question.

We discussed at considerable length the depletion policy which the Company adopted at the end of the 1934 fiscal year. A memorandum from Mr. Westcoat on the subject dated February 4, 1935 is included in the folio of questions and answers dated June 13, in the file and referred to above. He informed me

that before the policy was adopted and put in effect, it was discussed with the Securities and Exchange Commission and with the New York Stock Exchange, who seemed to be convinced that the policy was well founded. In addition, Mr. Westcoat informed me very confidentially, that the Company had an outside firm of accountants in New York give their opinion on the policy. I believe this firm was either Haskins & Sells or Price, Waterhouse. The opinion of this firm according to Mr. Westcoat had been favorable to the policy.

We came to the conclusion that the depletion policy seemed perfectly reasonable and that the disclosure made in the Prospectus and Registration Statement was full and complete.

Both Messrs. Burns and Martin of Arthur Andersen & Co. informed CLA that they considered the Company's depreciation rates adequate.

The summaries of the items "Contracts" and "Pending Litigation" in the prospectus were carefully checked by our Counsel as being adequate and sufficient.

To conclude, it seems fitting to state that the Company's officials and organization from beginning to end were most cooperative and apparently willing and desirous to furnish all pertinent information in connection with the Company and its operations. We found no disposition to hold back nor any wilful attempt to give mis-information. We have every reason to believe and do believe that all information furnished by the Company and included in the Registration Statement and prospectus was thoroughly checked and re-checked by the Company's officials and staff.

We have received no information from Mr. R. C. Holmes or any other source which would indicate that the presentation of the facts in the prospectus or Registration Statement was incorrect or misleading.

Representatives of the other underwriting houses met in Chicago with us on June 24 and 25 and again in New York with us on July 8. While in Chicago they had every opportunity to talk with officials of the Company and check the information contained in the registration statement and prospectus. A considerable number of their suggestions were incorporated in these documents.

C. L. AUSTIN

CLAg.

EXHIBIT No. 1863

[From the files of Mellon Securities Corporation]

**\$25,000,000 KOPPERS COMPANY FIRST MORTGAGE AND COLLATERAL TRUST BONDS,
SERIES A, 4%, DUE NOVEMBER 1, 1951**

This business was under consideration for several months beginning in the early part of summer of 1936. Considerable amount of work was done beginning in June covering an analysis and investigation of the Company's business and corporate affairs.

When the underwriting group was selected, every effort was made to give due consideration to past history and connections with the Company's previous financing and to some extent with the financing of its subsidiary, Eastern Gas & Fuel.

On account of business relations with Standard Gas and Electric in connection with Northern States Power, Bancamerica-Blair, Schroder Rockefeller & Co., Inc. and Parrish & Co., were included in the business at the particular wish of the Koppers Company who also suggested the inclusion of Byllesby & Co. Byllesby & Co., however, declined to go along. They had been offered the same amount as the two former. Dillon, Read & Co. were invited to participate and declined, stating that though they liked the business, they had not yet seen their way clear to do business in the State of Pennsylvania.

We stated clearly to Edward B. Smith & Co., and First Boston Corporation that we had no choice as to the selection of either house to appear second in the business: Smith on account of the indirect relationship through the Guaranty Company to the Koppers business, and First Boston on account of their relationship with Eastern Gas and Fuel. A solution was suggested by George Woods of the First Boston Corporation. He stated that they would be glad to take third position provided they could give us some help in the syndication of the deal by having Mr. Frank Stanton of their organization come down to Pittsburgh. He

made it clear that in no sense would they propose to inject themselves into the management of the syndication.

Following is a list of the underwriting participations with amounts:

	Mellon Securities Corporation.....	\$6,000,000
	Edward B. Smith & Co.....	2,500,000
	The First Boston Corporation.....	2,500,000
	Brown Harriman & Co., Incorporated.....	1,250,000
	Blyth & Co., Inc.....	1,000,000
	Bonbright & Company, Incorporated.....	1,000,000
	Kidder, Peabody & Co.....	1,000,000
	Lee Higginson Corporation.....	1,000,000
	Field, Flore & Co.....	900,000
	Goldman, Sachs & Co.....	900,000
	Halsey Stuart & Co. Inc.....	900,000
	Hayden, Stone & Co.....	900,000
	Stone & Webster and Blodget, Incorporated.....	900,000
	Bancamerica-Blair Corporation.....	500,000
	Otis & Co.....	500,000
	Schroder Rockefeller & Co., Incorporated.....	500,000
	Parrish & Co.....	250,000
	Kuhn, Loeb & Co.....	2,500,000
		<hr/>
		\$25,000,000
		C. L. AUSTIN.

3/10/37
CLA; mtw
FRD
KMC
FJK
TJP
HDMc

EXHIBIT No. 1864

[From the files of Mellon Securities Corporation]

Distribution:

FRD
CLA
JEB
KMC
FJK
TJP

Buying Department Memorandum.

JONES AND LAUGHLIN STEEL CORPORATION

This business was first discussed with us in November 1935 by the Company. Although we considered that we had no obligation with respect to the account to any other banking house, we discussed the business first with Morgan Stanley & Co. to determine whether that firm would care to assist us with the business. Mr. Harold Stanley said that he would be very glad to give us any help he could, but that if Morgan Stanley & Co. appeared in the business, they would insist on having the leadership. He made it clear that they would very possibly like to participate in the business in any event on a non-appearing basis. We decided to proceed on the latter basis.

We then approached Messrs. Swan and Walker of Edward B. Smith & Co., who were formerly connected with the Guaranty Company of New York, which had second position to the Union Trust Company of Pittsburgh in the previous preferred stock issue of Jones and Laughlin, and asked them if they would be prepared to help us on the registration and syndication of the business on the basis that it was clearly understood it would be our leadership and not a joint leadership.

Edward B. Smith & Co. were entirely satisfied to proceed on the above basis, and it was not until the business had been completed that the amount of their compensation was discussed with them and agreed upon.

There were no commitments made to anyone in this business with respect to continuing arrangements for the future.

C. L. AUSTIN.

8/17/36.
CLA: mtw,

MEMORANDUM

OCTOBER 29, 1935.

JONES & LAUGHLIN STEEL CORPORATION

Mr. W. J. Creighton, Vice President of Jones and Laughlin Steel Corporation, advised me today that he had discussed with Price Waterhouse, the corporation's auditors, the question of closing the books on October 31 for the purpose of an audit in connection with their proposed new bond issue.

For various reasons, it was determined that it would be advisable to delay the bond issue until after the end of the year, using the year-end figures in the registration statement, etc. The auditors have agreed to have the audit completed by February 10; and the various data for the Securities Exchange Commission, February 29. Under this schedule, the proposed issue would be out of registration by March 15.

This course was decided upon when it was realized that if the closing were October 31, it would be approximately March 1 before the proposed issue could be released from registration.

In view of the fact that it is anticipated the earnings for the fourth quarter will be very satisfactory, it seems advisable to follow the time schedule above outlined.

F. R. D.

FRD : JCH.

NOVEMBER 8, 1935.

We have discussed the J & L financing with Harold Stanley of Morgan Stanley & Co. and also with Messrs. Swan, Cutler and Walker of E. B. Smith & Co. In the discussion with Mr. Stanley it was made clear that Melsec would be glad to have Morgan Stanley & Co. take a substantial participation in the business. Mr. Stanley stated that if they appeared in the financing, it would be necessary for them to manage the business and have the first appearing position. After considerable discussion in Pittsburgh, Mr. Stanley was informed that this would not be satisfactory to Melsec and that we felt it necessary to lead the business.

Thereupon E. B. Smith & Co. were offered and accepted the opportunity to appear second to Melsec and to take part in the management of the business under our leadership. It was made clear by F. R. D. that relative amounts of underwriting of participation and any management fee would be discussed at a later time, which was satisfactory to E. B. Smith & Co. We are now working with council and with the company on various matters concerning the security to be set up, such as business of mortgage, and lien of the mortgage, etc.

EXHIBIT No. 1865

[From the files of Smith, Barney & Co.]

No. 293

Form 3 4-343

WILSON & Co., Inc.

OCTOBER 18, 1934.

The Guaranty Company informs me that the Purchase Group in the last Wilson financing, which was in January 1927, consisting of the offering of \$2,500,000 6% Notes due 1931, was made up as follows:

Guaranty	18¾ %
Hallgarten	18¾
Blair	26¼
Chase Securities Corp	11¼
Continental & Commercial Trust Savings	8½
First Trust & Savings	8½
Illinois Merchants Trust	8½

The last offering of the First Mortgage 6s due 1941 consisted of \$3,000,000 in April 1921. Interests on original terms were as follows:

Guaranty	25%
Hallgarten	"
Blair	35
Chase Securities Corp	15

Illinois Trust and Continental & Commercial Trust were brought in at a step-up of $\frac{1}{2}\%$ with a 10% interest each, reducing the interests of the aforementioned group accordingly.

C. L. AUSTIN.
(C. L. Austin.)

CLA/EF.

EXHIBIT No. 1866-1

[From the files of Smith, Barney & Co.]

Copy for Mr. J. W. Cutler

SEPTEMBER 10, 1934.

Memorandum to Mr. Swan.

WILSON & COMPANY

For some time Messrs. Safro and Nye in the Investment Advisory organization have been interested in the possibility of the recapitalization of Wilson & Co. George Nye did considerable work on a possible plan.

Herman Safro has talked recently with a Mr. Paul Appenzellar (formerly of Swartwout & Appenzellar) who indicated that a plan had been worked out by someone and had the approval of the Wilson management.

At Mr. Safro's suggestion I talked this morning with Mr. E. A. Potter, Jr., and told him of the interest which has existed in the possibility of the Wilson recapitalization by some of the members of this organization. I outlined to him the information which Mr. Safro had obtained from Mr. Appenzellar. Mr. Potter told me that many people, including Hornblower & Weeks, had been suggesting various plans to the Company for its recapitalization. He said that, whereas the Company was interested in the possibility of recapitalization and hoped to effect some plan, he believed the present was too early for this to be accomplished and thought that it would be not earlier than 1935 before anything would be done.

I asked Mr. Potter if he thought there would be any chance for this organization, having worked out a plan satisfactory to the Company, to make a profit in carrying it out. Mr. Potter said that he thought that was a possibility; that it would have to be done by working closely with the inner councils of the Company, which he indicated would be somewhat more difficult than ordinarily because of the fact that so many people were already knocking at the door. I took his reply, however, to be encouraging. It seems to me that if you want to go further with this, the best way to do it would be for you to have a talk with Mr. Potter sometime at your convenience with the idea that through him you might be brought into contact with the executive management of the Company for the purposes of discussion.

C. L. AUSTIN.

CLA/EF.

EXHIBIT No. 1866-2

[From the files of Smith, Barney & Co.]

SEPTEMBER 5, 1934.

Memorandum for Mr. Karl Weisheit.

In furtherance of the tentative plans of recapitalization of Wilson & Co., Inc. which were submitted to you by George L. Nye of this Department on August 13, I would like you to have the following information:

I talked today with Mr. Paul Appenzellar (formerly of Swartwout & Appenzellar) who has been interested in various reorganizations for a number of years including an active part in the M-K-T reorganization. Mr. Appenzellar stated that a plan of recapitalization of Wilson & Company has been worked up with the knowledge and consent of the Wilson management and which, according to present plans, meets with the latter's approval. In effect this plan provides as follows:

- (1) Payment of the accruals due on the Preferred and Class A stocks to be made in 5% Debentures (maturity not mentioned) and which Mr. Appenzellar stated would be worth at least 80.

- (2) Elimination of the Class A stock by conversion into common at some ratio not stated.
- (3) Reduction in consideration of all the above in the Preferred stock from a 7% rate to a 6% rate.
- (4) The payment of dividends on the common stock to be ultimately outstanding at some rate between \$1 and \$2 per annum.

Mr. Appenzellar personally owns several hundred shares of the Preferred stock and is interested in an investment trust that holds 1,000 shares. His attitude toward the above plan is favorable with the exception of the reduction in the Preferred from \$7 to \$6 to which he strongly objects and which, in his estimation based upon experience, will cause the entire plan to fall through. He urged that we use our influence upon those in touch with the situation (he meant E. A. Potter, Jr.) to eliminate this change in the regular dividend rate on the preferred.

HS:JSB.

HERMAN SAFRO,
Statistical Department.

EXHIBIT No. 1867

[From the files of White, Weld & Co. Letter from Faris R. Russell to John W. Cutler. Carbon copy of "Exhibit No. 1886."]

WHITE, WELD & Co.,
July 8, 1935.

Mr. JOHN W. CUTLER,
Messrs. E. B. Smith & Co.,
35 Nassau Street, New York, N. Y.

DEAR JOHN: You and Burnett Walker for your firm and Ben Clark and I for White, Weld & Co. have had several conversations during the course of the last several months with respect to refunding operations for Wilson & Co., Inc. Inasmuch as the understandings had between us were primarily between yourself and myself, I am sending this letter to you with a chronological history taken from our files on this matter. The history is as follows:

On February 26, 1935 an entrepreneur by the name of M. L. Freeman discussed with us the question of refunding the outstanding bond issue.

During the same week Mr. Freeman demonstrated that he was not merely presenting an idea which is, of course, open field for all free lance promoters but introduced in our office J. D. Cooney, Vice President of Wilson & Co., Inc. and the whole discussion was with respect to the matter of refunding their outstanding bonds. After such discussion, Mr. Cooney said that they would in the next few weeks decide on their program and said he would again discuss with us the question of what sort of a trade we might be able to work out.

We subsequently confirmed with Mr. Halstead Freeman that there was an open field for the business.

We recognized also that of the original houses in the major position on this business, all but one had discontinued activities.

Recognizing, however, that some of the partners of your firm had previously been officers of the Guaranty Co., which had discontinued its business, and not knowing whether you were active in considering this business, we decided to discuss it with you and, if you wished us to do so, join hands with you in its development.

On March 6th Ben Clark saw Joe Swan and advised him of the above and Mr. Clark's report on the meeting states that "Joe was frank to say that they had no discussion so far." Further that Joe said "I do not want to tie you up in any way and I will look into it with the idea that we are two friends and you will hear from me when I get posted."

On March 11th you telephoned to me about this matter, stating that you understood Freeman had been in to see us saying that he had authority to represent the company. You stated that this had been checked with the company and it had been found that Freeman was not authorized to negotiate and you further stated that on account of your close friendship with the Guaranty Trust Co. you had as good a position as anyone to negotiate with Wilson & Co. and it was your thought that we should tell Mr. Freeman we were not in a position to deal with him and that your firm would follow the matter with the company and come back to us as matters developed.

On March 18th you telephoned me saying that the old account at the Guaranty was joint with Hallgarten & Co., that you had talked with Hallgarten & Co.,

whose Chicago partner is a director of the company, and had arranged that we were to be included in the business. You said further that you hoped it would be agreeable to us to let the matter of our percentage rest for the present as you intended to work out a fair and reasonable place for us. I told you this was satisfactory and left the matter in your hands.

I asked you whether there was any indication of serious competition from other directions and you stated that you did not see how with the friendship of E. A. Potter and Emerico there could be much doubt as to your getting the business. We consequently folded our hands to await developments.

Recently when it became apparent that the business was in the immediate making and not having heard from you, I called your office but could not reach you. Later the same day Burnett Walker telephoned me asking for a review of the Wilson & Co. matter as between ourselves and yourselves. I gave him the above story.

I did not hear further from Burnett Walker but he came over and saw Ben Clark, expressed extreme regret and stated that embarrassing as it was to your firm, we could not be included in the Wilson & Co. business, that Field, Glore & Co. and the company itself had refused your request that we be included.

(Handwritten) : B. Walker says this incorrect. Field OK on us for pctpn.

The above chronological story of this matter is based on memoranda made immediately after the various conversations took place and, hence, is neither hazy in our minds nor subject to misunderstanding or faulty recollection.

The above is not sent to you as a record on which we make any claim on you for Burnett Walker has already stated your position.

The experience, however, makes it necessary for us to raise a question as to another matter so I request that you show this letter to Joe and ask that he let us know just what he wishes us to understand with respect to the position reserved for us in the matter of Columbia Gas & Electric, about which I have never had any conversation with him but it was cleared with Joe by our mutual good friend, Jim Hutton.

In order that you and Joe may have before you the Columbia Gas & Electric situation, I might say that on April 11th I discussed with Jim Hutton the entire Columbia Gas & Electric situation, as a result of which Jim advised me that so far as he was concerned we could not only participate on original terms but might also appear in the public advertising. He said he would take it up with Joe Swan along these lines and that he, Jim, would advise me what he had been able to work out.

On April 26th Jim told me he had had a very satisfactory talk with Joe and that Joe had agreed with the principle that our firm was to have a participation on original terms and an "appropriate" place in the public advertising.

We here trust that none of you will receive this letter as being in any sense controversial but will also, we believe, recognize the necessity of our knowing at this time just where we stand in regard to this further piece of business which has been discussed with you.

With regards to you all, I am,

Sincerely,

FARIS R. R.

EXHIBIT No. 1868

[From the files of White, Weld & Co.]

M. L. FREEMAN

Financing of Industrial and Public Utility Corporations

FIFTEEN WILLIAM STREET, NEW YORK, February 25, 1935.

Re: Wilson & Co., Inc.

GURDON WATTLES, Esq.,

WHITE, WELD & Co., 40 Wall Street,
New York, N. Y.

MR. WATTLES: Referring to our telephone conversation of this morning, you no doubt know that the company is the third largest meat packers, preceded by Armour & Co. and Swift & Co. There are about \$16,000,000. outstanding 6% first mortgage bonds, series A, originally underwritten by Guaranty Trust Co. and associates. The bonds are due April 1, 1941 and are callable

at \$107½ on any interest date on eight weeks notice. They are listed on the New York Stock Exchange and have been selling currently between \$109½ and \$110. The low for 1934 was \$97¼, the high \$110. Times interest earned were as follows:

1928-----	2.15
1929-----	2.17
1930-----	2.49
1931 deficit \$525,527 before interest.	
1932-----	1.04
1933-----	3.59
1934 (fiscal year Oct. 27, 1934)-----	5

The earnings for the first quarter of this fiscal year were approximately \$1,500,000, which is a better showing than for the like quarter 1933 and 1934.

The current assets as of October 27, 1934 were \$34,289,841, current liabilities \$8,260,614, leaving a working capital of \$26,029,227. The plant and equipment as of that date were carried after depreciation at \$37,059,861.

I had negotiations with Mr. Edward Foss Wilson, President, pertaining to the possibility of arranging an issue of between \$17,000,000. and \$20,000,000. of 4½% twenty-year first mortgage bonds with a fixed sinking fund of \$200,000. per annum, callable at \$103. for the first three years, to be scaled down after that. The price to be \$97.

Herewith is a copy of a letter from Mr. Edward Foss Wilson, President, of February 21st, in which he expressed a desire that I discuss the matter with him, Mr. W. C. Bueth, Treasurer, and Mr. Thomas E. Wilson, Chairman of the Board.

In view of the fact that it is essential to telephone Mr. Wilson tomorrow, I shall appreciate it if you would be kind enough to advise me whether you would be prepared to go to Chicago, and, if so, when.

Very truly yours,

M. L. FREEMAN.

MLF/AB
Encl.

EXHIBIT No. 1869

[From the files of White, Weld & Co.]

Office of the President.

WILSON & Co., Inc.
Chicago, February 21, 1935.

Mr. M. L. FREEMAN,
15 William Street, New York, N. Y.

DEAR SIR: We have your kind letter of February 19th in which you mention your interest in arranging purchase of bonds from our Company.

We would be very glad to discuss your proposition whenever you happen to be coming out to Chicago. If you will let us know when this will be, I believe we can arrange to have both our Treasurer, Mr. W. C. Bueth, and Mr. Thomas E. Wilson also on hand to enter into the discussion.

As you of course realize, our biggest problem in refunding our present bond issue due in 1941 is the call price of 107½.

Yours very truly,

(Signed) EDWARD FOSS WILSON.

EXHIBIT No. 1870

[From the files of White, Weld & Co.]

FEB. 26, 1935.

Memorandum for Mr. Timpson.
Re: Wilson & Co.

Mr. M. L. Freeman has brought to us a refunding proposition which he claims E. F. Wilson, President of the above company, is willing to entertain. This is for the issuance of between \$17,000,000 and \$20,000,000 of 4½% 20 Year First Mortgage bonds with a sinking fund of \$200,000 per annum, bonds to be callable

at 103 for the first 3 years with a scale price thereafter. The price to the company to be 97.

The company has outstanding at the present time \$16,000,000 First Mortgage 6s due 1941 and callable at 107½ on 8 weeks notice. The present bonds are currently selling on the New York Stock Exchange at 109½, to yield 4.20% and have ranged during the last year between 97¾ and 110.

These bonds are not held by any of the large institutions. Mr. Stiles of the Prudential Insurance Co. told me today on my checking with him that Wilson & Co. had not been considered one of the best packing companies but had been doing considerably better lately, that without making a rather thorough study he could not give me an opinion as to whether the bonds would be of interest to the large insurance companies. He suggested our getting a check from either the First National Bank or the Continental Illinois National Bank in Chicago or Samuel McRoberts, former head of the Chatham Phenix here in New York, in order to get a quick check as to whether the company was one that would be desirable to endeavor to work out a financing picture with.

Mr. Haggerty of the Metropolitan Life stated that they did not like packing company bonds and considered Wilson & Co. a Class B company and would not be interested in the bonds.

Mr. M. L. Freeman suggested that on a basis of say 3 points gross in the business there would be a division of underwriting profit of say ¼ of a point to ½ of a point, commitment profit of say ¾ of a point and selling group profit of say 1¾ to 2 points. On such a basis he said he would want to have ⅓ of the originating profit. This would mean that he would get ½ of either ¼ of a point or ½ a point depending on which was settled on as an originating profit on the above basis.

(Signed) G. W. WATTLES.

MW

EXHIBIT No. 1871

[From the files of White, Weld & Co.]

[Copy]

[Postal Telegraph]

[The Mackay System]

NEW YORK, N. Y., Feb. 27, 1935

Mr. EDWARD FOSS WILSON,

Wilson & Co., Inc., 4100 Ashland Avenue, Chicago, Ill.:

Could not reach you by telephone stop The partners banking institution referred to letter February nineteen would like to make your acquaintance can you come here for discussion regarding purchase twenty million four and one half percent bonds due nineteen fifty-five interest and sinking fund million one hundred thousand per annum price 97 net no commissions callable one hundred and three first three years gradually reducing to par stop Meeting here would expedite matter However if you or other executive cannot come New York am prepared to arrive Chicago March fourth Please wire.

M. L. FREEMAN.

Charge acct. M. L. Freeman 15 William St., New York, N. Y.

EXHIBIT No. 1872

[From the files of White, Weld & Co.]

[Copy]

Received Feb. 28th by private wire and transmitted from New York office of Wilson & Co.:

Dated 2/27/35.

M. L. FREEMAN,

15 William St., New York, N. Y.:

Vice President J. D. Cooney left for New York today special matters. He has copy of your telegram will call you your office Thursday morning to make appointment for some time during the day to discuss your proposition.

E. F. WILSON, President.
WILSON & CO., INC.

EXHIBIT No. 1873

[From the files of White, Weld & Co.]

M. L. FREEMAN

Financing of Industrial and Public Utility Corporations

15 WILLIAM STREET, NEW YORK, *February 28, 1935.*

Re: Wilson & Co., Inc.

GURDON W. WATTLES, Esq.,

White, Weld & Co., 40 Wall Street, New York, N. Y.

DEAR MR. WATTLES: Referring to our conversation over the telephone, I enclose herewith a copy of my telegram of February 27th, to Mr. E. F. Wilson, President, as well as a duplicate of his reply of same date.

Sincerely yours,

M. L. FREEMAN.

MLF/AB

2 Encls.

EXHIBIT No. 1874

[From the files of White, Weld & Co.]

M. L. FREEMAN

Financing of Industrial and Public Utility Corporations

15 WILLIAM STREET, NEW YORK, *February 28, 1935.*

Re: Wilson & Co., Inc.

GURDON WATTLES, Esquire,

White, Weld & Co., 40 Wall Street, New York, N. Y.

DEAR MR. WATTLES: As I told you yesterday over the telephone, it would be necessary to call Mr. Wilson. Either you or I can do it. Lets have a chat first in reference to your conversation of today with Mr. J. D. Cooney and Halstead Freeman.

Will you please have your secretary advise me when you can see me?

Very sincerely,

M. L. FREEMAN.

MLF/AB

EXHIBIT No. 1875

[From the files of White, Weld & Co. Letter from White, Weld & Co. to M. L. Freeman]

[File copy]

WHITE, WELD & Co., *February 28, 1935.*

M. L. FREEMAN, Esq.,

15 William Street, New York City.

DEAR MR. FREEMAN: With reference to your letter of February 25, 1935 regarding Wilson & Co., Inc., if, as a result of the negotiation with you, we should complete a deal for the refunding of Wilson & Co.'s bonds substantially as outlined in your letter, we hereby agree that out of the compensation or profit which may be received by White, Weld & Co., we will pay you as follows.

The proposal outlined by you contemplates a gross spread of three points for placing these bonds. This spread will probably be divided by us into a selling group proportion of from $1\frac{3}{4}\%$ to 2% ; an underwriting proportion of probably $\frac{1}{4}$ of 1% , and an originating profit of probably $\frac{1}{4}$ to $\frac{1}{2}$ of 1% . It is agreed that we are to pay you one-third of such originating profit, as we may receive, after out-of-pocket expenses properly chargeable to such profit. Such one-third shall be payable to you upon receipt by us of our share of the originating profit and the determination of said out-of-pocket expenses.

While, as stated above, it is at present contemplated that the originating profit will probably be $\frac{1}{4}$ to $\frac{1}{2}$ of 1% , the final actual percentage is to be determined by us in our sole discretion. It is understood that we may also participate in such underwriting and selling groups as may be formed and receive

profits as a result of such participations, but that you shall not be entitled to any share or participation in any profits which may accrue to us by reason of our participation in such groups or either of them.

If the foregoing is in accordance with your understanding, will you kindly so indicate by signing and returning to us the enclosed duplicate of this letter.

Very truly yours,

MW
Accepted

“EXHIBIT No. 1876-1”

[From the files of White, Weld & Co. Letter from White, Weld & Co. to M. L. Freeman]
[File copy]

WHITE, WELD & CO.,
March 1, 1935.

Re: Wilson & Co., Inc.

M. L. FREEMAN, Esq.,
15 William Street, New York City.

DEAR MR. FREEMAN: I am enclosing signed letter which we discussed today.
Yours very truly,

MW
Encl.

“EXHIBIT No. 1876-2”

[From the files of White, Weld & Co.]

M. L. FREEMAN

FINANCING OF INDUSTRIAL AND PUBLIC UTILITY CORPORATIONS

15 WILLIAM STREET., NEW YORK, March 27, 1935.

Re: Wilson & Co. Inc.

GURDON W. WATTLES, Esq.,
White, Weld & Co., 40 Wall Street, New York, N. Y.

DEAR MR. WATTLES: Referring to our recent conversations in which you informed me of your new arrangements, will you be kind enough to forward me a new argeement?

Thanking you, I remain
Very sincerely,

M. L. FREEMAN.

MLEF/AB

EXHIBIT No. 1877

[From the files of Smith, Barney & Co. Diary entries by J. W. C. (J. W. Cutler), C. L. A. (C. L. Austin), B. W. (Burnett Walker), J. J. B. (J. J. Buckley), C. W. K. (C. W. Kennard) and E. W. (E. Wels)]

WILSON & Co.

CLA talked with E. A. Potter reference possibility of our working on recapitalization plan. JRS should talk with EAP before seeing officials of company. JWC—9/11/34.

JRS has talked with EAP and we are now discussing possible plans which we might suggest to Company. Believe Company is actually considering specific plans. CLA—10/9/34.

CLA had a talk with Mr. E. A. Potter, Jr., of the Guaranty Trust Company on October 17th and BW and CLA together had additional conversation with Mr. Potter the following day, as a result of which Mr. Swan is planning to be available to Mr. Potter in Chicago on Tuesday, October 23rd, at which time there is scheduled a Directors' meeting of the Company. CLA 10/19/34.

Talked with E. A. Potter as to outcome of Directors' meeting in Chicago this week, in which it was understood plans of reorganization would be taken up. JWC—10/27/34.

JRS and JWC talked with EAP Jr. yesterday. Referring to the directors meeting last week he said that a plan of reorganization, looking towards funding the 26% Pfd dividend in arrears with (1) debentures or (2) 5% Pfd, had been opposed and that the matter had been returned to the Committee for further study. He indicated the Co's business for the first 11 months of their year had been extremely good (\$4,700,000 net). JWC—10/30/34.

E. A. Potter said that at a Directors meeting yesterday in Chicago the Reorganization Plan was again postponed for thirty days, largely because he did not feel the terms were quite generous enough. JWC—11/30/34.

Talked with Ned Potter, who said he had spoken to Mr. Wilson in our behalf and would keep us advised. Doubtful if there is anything we can do here. JWC—1/2/35.

Clark of White Weld called me, but in my absence spoke to JRS saying that M. L. Freeman had been in to see them regarding refunding of Wilson 6% Bonds, stating that he spoke with authority from the Company. I subsequently talked with E. A. Potter Jr., who called Mr. Wilson on the telephone. Mr. Wilson denied that they had given Freeman any authority to speak for them, and asked Mr. E. A. Potter, Jr., to please so state if asked. E. A. Potter Jr. suggested if we are interested, that we write Mr. Wilson and say that when he was ready, we will be glad to have a chance to figure. The matter will receive consideration some time in the near future, and has been pushed forward on account of the Swift Refunding and a probable Cudahy Refunding. JWC—3/8/35.

I reported to Farris Russell my conversation with Ned Potter, who has talked, with Mr. Wilson. Mr. Russell said they would leave the matter of following this to us, and rely on us if anything developed. JWC—3/11/35.

CLA and I talked again with Ned Potter and submitted plan for replacing 6's with \$16 million 15 year 4's, to be sold on a 4.25 basis. This would involve bank credit of \$2,300,000. EAP said he would prefer no bank loan. He also suggested we write Wilson direct, and the matter, while not up at the moment, would probably come up at the March meeting on or about the 25th. JWC—3/12/35.

Talked again with Potter on telephone, who called me. Explained that the Guaranty had handled previous financing for Company, and had associates in those former deals, some of whom would have to be taken care of. Russell said he understood and would leave it to us to take care of his firm in the proper way. JWC—3/12/35.

JRS and I talked with Maurice Newton of Hallgarten 3/14/35 and the next day JRS talked with Emerich of Hallgarten, a director of Wilson. We told him we had been working on the business and referred to the old joint account they had with the Guaranty and asked them to join us, which they said they would be glad to do. We also told them that we were committed to White Weld & Co. for an interest if business resulted. I subsequently reported this to Faris Russell, who again said they were entirely agreeable to leaving the makeup of the group and interests to us. I also reported the Hallgarten development to Ned Potter, who thought it was a wise move. Mr. O'Connor of Wilson & Co.'s New York office subsequently called JRS and said Mr. Wilson had received his letter and also added that H. G. Freeman was advising them in their financing. JWC—3/18/35.

H. D. Freeman dropped in later to say the same thing and indicated there was no hurry, as if they decided to call the bonds Oct. 1st notice would not go out before August 1st. JWC—3/20/35.

Newton reported from Emerich, who attended directors meeting today, that the matter of refinancing was not discussed. JWC—3/26/35.

JRS called on Mr. T. E. Wilson in Chicago 4/1 and was very cordially received by him. Explained to him the dissolution of Guaranty Company and status of EBS&Co. and advised him we were very anxious to be given consideration in connection with any financing which he might do. As he had already advised JRS, he is consulting with Halstead Freeman but said he would certainly have us very much in mind. JWC—4/4/35.

Ned Potter said Company had engaged Price, Waterhouse to begin necessary work looking towards registration. As far as he knew they had made no commitments with any bankers. JWC—5/3/35.

JRS spoke to Newton re inclusion of Field, Glore & Co., on account of Halstead Freeman, who is being retained by the company in connection with proposed financing. Speak to First Boston before going further. JWC—5/14/35.

JRS talked to H. Freeman on telephone. Nothing very urgent as yet. Confirmed new audit in process of being made. Will be glad to discuss situation with us. JWC—5/31/35.

Mr. Briggs of Byllesby & Co. talked to me about Wilson. I told him we were hopeful but were not in position to talk. He asked if we were put in charge of the business what our attitude would be towards them and I said that he could start out with the assumption that we would be delighted to have them in any piece of business with us although the way business was being presented to people today we had to recognize that in many instances groups were practically made to order by the companies—all of which he understands. They, however, must be considered in this connection. Mr. Briggs called my attention to the business which they were very glad to have had us in and would like us to be in Dusquesne, Oklahoma and, of course, Northern States business which will come along a little later. BW—6/6/35.

Saw Halstead Freeman 6/4/35 at Palmer House, Chicago. Very friendly and believe he will be of help. JWC—6/4/35.

T. E. Wilson expected back about June 12th. JWC—6/5/35.

W. C. Buethe called JRS on telephone today and said they were actively discussing refunding operation and they wanted to put the matter in our hands jointly with Field Glore. JRS mentioned leadership but Buethe apparently did not want to get into that. JRS to see in Chicago. JWC—6/6/35.

Judge Cooney stopped in today and stated that they had in the past 1½ years made capital additions of some \$4,000,000, which could form the basis for the issuance of additional bonds. He stated that there had been some discussion in their office about the advisability of raising \$4,000,000 or \$5,000,000 additional capital for working capital purposes, and if we thought that there was any chance that there would be a substantial rise in interest rates within the next year or two, they would give consideration to the issuance of additional debt, either under the mortgage or as 1 to 5 year serials. Judge Cooney stated that with the light run of live stock which they have been experiencing and which they would probably experience for another year or two in view of the drought and government slaughter program, there was little danger of their running into working capital shortage. When, however, the run of live stock returns to normal, they will require larger working capital for inventory purposes. If, however, we felt that there would be no material change in interest rates for a minimum of two years, it was his thought that they could borrow so cheaply at the banks that public financing would be unnecessary; particularly, in view of the fact that if they could hold off public financing for a period of two years and the live stock run did not come back until that time, they would probably not require any financing because of the building up of cash resources in the meantime.

He asked us to communicate with them immediately if we felt that any marked change in interest rates was impending. JJB—12/11/36.

BW and CWK met with Mr. Halstead Freeman of Glore Forgan and Judge Cooney of Wilson & Co. on Wednesday, March 17, to discuss a revised proposal. The revised plan suggested was the issuance by the Co. of \$6,000,000 to \$6,500,000 Conv. Debs. convertible at \$12.50 or \$13. per share, depending upon market conditions. It was agreed that bankers would match their time against the Company's and go ahead and prepare the necessary documents for registration on such a proposal, subject to an agreement on price to the Co. at a later date. Thursday morning BW and CWK met with Mr. Wilson and Judge Cooney and H. Freeman in Mr. Wilson's room at the Biltmore Hotel. Mr. Wilson was apprised of the general agreement which had been made the previous day; this was satisfactory to him. Also discussed at this meeting the relationship between Glore Forgan and E. B. S. and the handling of the syndication and books of this deal. BW stated that on a deal of this kind it would be impossible to handle it as the previous one had been, and that one of the two firms would have to have complete control, even the pecuniary compensation was the same for each firm. No decision was reached at the meeting as Mr. Wilson wanted to give the matter further thought. The latest proposal is contained in a memorandum dated March 17, 1937. CWK—3/18/37.

Company entered first in public offering today of \$6,500,000 Conv. 3% Debs. at 101% and acc int. BW—5/12/37.

EXHIBIT No. 1878

[From the files of Smith, Barney & Co.]

(Handwritten:) N. B. file.

MARCH 13, 1935.

Mr. THOMAS E. WILSON,

*Chairman of the Board, Wilson & Co., Inc.,**41st St. & Ashland Ave., Chicago, Illinois.*

DEAR MR. WILSON: During the past few months various of my partners and I have had conversations with Mr. E. A. Potter, Jr., with respect to the possibility of a refunding operation in connection with your outstanding 6% Bonds. Within the last few days we have been informed by Mr. Potter that the Company is considering such an operation.

Although we understand that you perhaps are not ready to come to a decision in this matter immediately, I wish to inform you that my firm stands ready to be of service to you in this connection. We believe that an operation profitable to the Company can be worked out and are prepared to discuss a definite proposal with you. I should be glad to come to Chicago to talk over this matter with you any time it suits your convenience.

I would like to take this opportunity of congratulating you upon the success of your Reclassification Plan.

With kindest regards, I am,

Sincerely yours,

J. R. S.

JRS/CLA/EF

EXHIBIT No. 1879

[From the files of Smith, Barney & Co.]

(Handwritten:) N. B. file.

MARCH 8, 1935.

Memo to: Mr. C. L. Austin, Wilson & Company.

Clark of White Weld called me, but in my absence spoke to J. R. S. saying that M. L. Freeman had been in to see them regarding refunding of Wilson 6% Bonds, stating that he spoke with authority from the Company. I subsequently talked with E. A. Potter, Jr., who called Mr. Wilson on the telephone. Mr. Wilson denied that they had given Freeman any authority to speak for them, and asked Mr. E. A. Potter, Jr., to please so state if asked.

E. A. Potter, Jr., suggested if we are interested, that we write Mr. Wilson and say that when he was ready, we will be glad to have a chance to figure.

The matter will receive consideration some time in the near future, and has been pushed forward on account of the Swift Refunding and a probable Cudahy Refunding.

J. W. C.

JWC:h

EXHIBIT No. 1880

[From the files of The First Boston Corporation]

(Handwritten:) Folder #4, \$20,000,000, 4% Due 1955.

THE FIRST BOSTON CORPORATION,
New York, N. Y., May 18, 1935.

Confidential.

J. H. BRIGGS, Esq.,

*Vice President, H. M. Bylesby and Company,**231 South LaSalle Street, Chicago, Illinois.*

DEAR JOE: On last Thursday Joe Swan of Edward B. Smith & Co. called up Harry Addinsell and told him that they were working on a refunding operation for Wilson & Co.

In checking up our past historical records, it came to my attention that over a period of years the financing for Wilson & Co. was handled by a group of which the Guaranty Company was the manager and in which were included Chase Securities Corporation, Blair & Co., Halgarten & Co., First Trust and Savings

Bank, Chicago, Continental and Commercial, Chicago and Illinois Merchants Trust Company, Chicago.

For your confidential information, the Guaranty, Chase, Blair and Haigarten each had an interest of approximately 18.75%.

In the early part of March Miles Warner told me of the discussions which he had had with one of the Wilsons and asked if we would be interested in figuring on the business and on the 15th of March, in response to a wire from George Leness, I indicated to Miles that we were unwilling to undertake a deal along the terms similar to Swift or to enter into negotiations which involved a high degree of competition and stated that if the company was prepared to sit down and discuss the best form of financing, we would be interested in principle in so doing. I did not hear anything further about this matter and assumed that it had died a natural death.

At the time of my discussions with Miles, I did not realize that the Chase Securities Corporation had always been in the group headed by the Guaranty Company of New York. As Mr. Swan indicated that they had discussed this matter, we told him that we would be delighted to join with him in discussing the re-formation of the old group. We told Mr. Swan of Miles Warner's connection with one of the Wilsons and of our discussions with him and said that we would like to see—when, as and if the group is formed—that H. M. Byllesby and Company had a position in the business and that we assumed that this would be agreeable to him. He indicated to us that he also wanted to consider the inclusion of White, Weld and Field Glore.

I know that you will protect me on this information, but I want you to know the facts in connection with these discussions and while, naturally, I would not want to attempt to involve you in making any decision, it seems to me that it is most logical that the old group should have a legitimate claim on the business—particularly with the tie-in with the Guaranty Trust Company and if we can work it around so that H. M. Byllesby and Company has an original interest and an appearance position, it would seem to be the desirable thing to do—rather than to get into a competitive mess.

In addition, I want you, personally, to know that we urged the inclusion of H. M. Byllesby and Company and will do everything in our power to see that a place is made in the business for you if you so desire. In the meantime, I know that you will protect me in giving you this information as—frankly, we have not attempted to obtain clearance with Mr. Swan to discuss the matter with you.

Please let me know sometime early next week if you would like to have us continue to advance the argument that you should be included in this group with an appearance position and I know in the meantime that you will protect me in this matter, as will Miles, in case anything is said to him.

With kindest regards,

Sincerely yours,

DRL/g

_____, Vice President.

EXHIBIT No. 1881

[From the files of The First Boston Corporation]

(Hand written:) Folder # 4, \$20,000,000, 4%—Due 1955, guide "Memo."

WILSON & COMPANY, INC.

Mr. Swan asked me yesterday whether we would join with them in reconstituting the old group which the Guaranty headed for Wilson & Co. business. After discussion here I told Mr. Swan that we would be glad to do so. I called his attention to the fact that Mr. Miles Warner of Byllesby, who is a personal friend of some of the younger Wilsons, had talked with Mr. Leness about the matter some months ago, but that we told Mr. Warner that we would not want to be drawn into competition for the business and we have heard nothing about it since.

I therefore suggested to Mr. Swan that if a group was getting together, some consideration be given to including Byllesby in it on some basis. He subsequently called me back to say that he thought for certain reasons that it would be desir-

able to include White Weld and Field Glore and asked if we would consider this question and give him our views.

H. M. ADDINSELL.

MAY 16th 1935.

"EXHIBIT No. 1882-1" appears in full in the text, p. 12526.

EXHIBIT No. 1882-2

[From the files of Smith, Barney & Co. Memorandum by J. J. Buckley]

No. 570.

SEPTEMBER 9, 1935.

WILSON & Co., INC., FIRST MORTGAGE TWENTY-YEAR BONDS-SERIES A 4%, DUE JULY 15, 1955.

Before actual work on the deal was begun a preliminary meeting was held on 6/10/35 in the Chicago Offices of Field, Glore & Co., attended by Chas. Glore and Maurice Bent of Field, Glore and BW and JJB of EBS. Glore advised that he had been informed by Russ Forgan from New York that he (Forgan) and JRS had tentatively discussed the following syndicate:

E. B. S.....	25%	Eastern Manager
Field Glore.....	25%	Western "
The First Boston Corp.....	10%	
Speyer & Co.....	10%	
Hallgarten & Co.....	10%	
Bancamerica Blair Corp.....	10%	
White Weld & Co.....	5%	
Goldman, Sachs & Co.....	5%	
	100%	

In this meeting Chas. Glore stated that he would like to make room for Lee Higginson Corp. and BW stated that he would like to make room for Bylesby & Co.

On 6/11/35 a meeting was held at Wilson & Co.'s Chicago Offices attended by Messrs. Buethe, Cooney, and Hoffman, officers of Wilson & Co., Halstead Freeman, then representing Wilson & Co. in an advisory capacity, Glore and Bent of Field, Glore and BW and JJB. After discussing the claims of various underwriting houses the company, through Mr. Buethe, indicated that they would be pleased with a syndicate composed of (or at least including) the following houses: E. B. S., Field Glore, Speyer, Kuhn, Loeb, Hallgarten, Lazard Freres, Lee Higginson, Hornblower, Goldman Sachs.

In discussing the various underwriters under consideration Mr. Buethe specifically excluded White Weld by name, despite the fact that BW had indicated that he would be pleased to have White Weld included in any group formed. Pressed for our views of the group BW stated that he had no exception to any name on the list, but did feel that the issue would need "selling" and that he would prefer to see the group contain greater retail distribution ability, and when asked to be specific BW stated that if he were to choose a group without regard to what obligations the company might be under to other houses, he would suggest as the four leaders in the business E. B. S., Field Glore, First Boston and Brown Harriman. Later in the discussion he also mentioned Bylesby as having good distribution among Chicago houses. Chas. Glore agreed entirely with BW.

Mr. Buethe insisted that Speyer appear ahead of all houses except the two leaders, because Speyer had been helpful on the reclassification of the stock last winter and had offered the first refunding plan for the company's consideration. Goldman Sachs were included at the company's request because they had dealt in the company's commercial paper, and Hornblower was included at the company's request because they also had been of assistance to the company in the matter of reclassification of the company's stock. The other underwriting houses were proposed by the company primarily because they already had submitted refunding plans to the company.

Ultimately it was agreed (and confirmed at another meeting the next day, 6/12/35) that the group tentatively would be as follows, subject to approval of Mr. Thos. E. Wilson, who was expected to return from Europe within a few days:

E. B. S.	\$5,000,000	25%
Field Glore	5,000,000	25
Speyer	2,000,000	10
First Boston	2,000,000	10
Hallgarten	2,000,000	10
Goldman Sachs	800,000	4
Bancamerica-Blair	800,000	4
Lazard Freres	800,000	4
Hornblower	800,000	4
Lee Higginson	800,000	4
	\$20,000,000	100%

with the reservation that it might be necessary to make room for Kuhn Loeb, who, through Elisha Walker, had put considerable pressure on the company for the business. (Blair, Walker's former affiliation, having had largest interest in previous financing.) Ultimately Kuhn Loeb was included to the extent of \$2,000,000, or 10%, and participations of all other members were reduced by 10%, and about mid-way in the registration period Kuhn Loeb decided not to appear in the advertising or on the face of the prospectus and requested that its name appear last in the list of underwriters appearing inside the prospectus and in the registration statement.

It was agreed that E. B. S. be Eastern Manager and that Field Glore be Western Manager, E. B. S. to lead in every respect except for publicity and advertising in Chicago territory.

Accordingly the offering was made on July 30, 1935 by the following group, with the participations indicated (Kuhn Loeb not appearing publicly):

Edward B. Smith & Co.	\$4,500,000
Field, Glore & Co.	4,500,000
Speyer & Co.	1,800,000
The First Boston Corporation	1,800,000
Hallgarten & Co.	1,800,000
Goldman, Sachs & Co.	720,000
Bancamerica-Blair Corporation	720,000
Lazard Freres & Company, Incorporated	720,000
Hornblower & Weeks	720,000
Lee Higginson Corporation	720,000
Kuhn, Loeb & Co.	2,000,000
Total	\$20,000,000

J. J. B.

EXHIBIT No. 1883

[From the files of Wilson & Co., Inc.]

CHICAGO, May 23, 1935.

DEAR MR. WILSON: The matter of refunding the bonds has been discussed between Edward, Mr. Buehe, Mr. Hoffman, Mr. Freeman and myself, and we all feel that as the time approaches, that there is a serious question whether ample time would remain after you return to Chicago, around June 15. It seems to us that it is necessary to decide upon the bankers who are to underwrite the issue and to discuss with them and settle some of the details with reference to the trust deed and prospectus, especially such questions as whether an appraisal of the property is necessary, the kind of opinion of title required, whether or not the fixed assets of the subsidiaries are to be pledged directly under the mortgage or through collateral trust agreements, as well as the interest rate, call price, sinking fund provisions and underwriter's commissions. These latter details, however, would not be finally settled until you return. We feel that it is highly desirable that the underwriting house be determined upon at an early date in June and discussion of the above matter be had. As

you know, the following firms have indicated a desire to discuss the matter with us:

1. Kuhn, Loeb & Co.
2. E. B. Smith & Co.
3. Speyer & Co.
4. Field, Glore & Co.
5. Lazard & Co.
6. Hallgarten & Co.
7. Hornblower & Weeks.
8. White, Weld & Co.
9. Lee, Higginson & Co.

It is felt that it might be desirable to have two firms instead of one to head the underwriting syndicate. With the exception of Hallgarten & Co., none of the houses who have handled our Company's previous issues are still in existence, although some of the former heads are in going firms. E. B. Smith & Co. do a good deal of the business of the old Guaranty Company and as you know, Mr. Swan is their President. Speyer & Co. have been active in making recommendations and Field, Glore & Co., while a relatively new house might be advantageous because of their Chicago origin. Mr. Buethé, and Mr. Freeman definitely recommend that the two houses should be picked out of the last above named three firms, namely, E. B. Smith & Co., Speyer & Co., and Field, Glore & Co. If this is done, it could probably be arranged that any of the other firms would be invited to participate in a substantial way at our request.

We understand that Armour & Co. are now having an audit made and are negotiating for the refunding of their bonds and it is said that Cudahy Packing Company are also discussing the matter actively.

If you are agreeable to definitely picking the underwriting bankers before you return, will you please indicate your choices by cable, quoting the number opposite the firm's name and if you agree that it is advisable to have two houses, will you please indicate the houses.

I think it would be entirely possible to delay any discussions with the bankers till after June 15, and still be able to make and conclude all arrangements prior to August 5, the date it is necessary to call our outstanding bonds. However, I believe that to do so would be rather hazardous as there might be a possibility of having to meet some of the bankers' requirements, especially having to do with the form of the trust deeds, the appraisal or clearing up the title, that could not be done in so short a time.

Yours very truly,

JAMES D. COONEY.
J. D. C.

EXHIBIT No. 1884

[From the files of Wilson & Co., Inc.]

EXCELSIOR—ROMA

COONEY: Letter 23rd—would use two houses number four and selection between two, three, one—according present attitude favorable trade—because of present [Bonds] borrowings am leaning toward all bonds Sailing Thursday Both fine—

EXHIBIT No. 1885

[From the files of The First Boston Corporation]

6-27-1935.

(Handwritten:) Folder # 4 \$20,000,000 4%—Due 1955 Guide "Memo."

WILSON & COMPANY

While Mr. Burnett Walker of Edward B. Smith & Co. was here this afternoon, he explained the banking politics in connection with the proposed issue of \$20,000,000 bonds for this company.

Field, Glore are going to head the business in the west and Edward B. Smith & Co. in the east. The respective interests in the business are as follows:

Field, Glore & Co.....	25%
Edward B. Smith & Co.....	25%
Speyer & Co.....	10%
The First Boston Corporation.....	10%
Hallgarten & Co.....	10%
Goldman, Sachs & Co.....	4%
Bancamerica-Blair.....	4%
Lazard Freres & Co., Inc.....	4%
Hornblower & Weeks.....	4%
Lee Higginson Corporation.....	4%

While it has not yet crystallized, it is probable that only the first five names will appear in the advertisement. Mr. Walker explained, confidentially, to me that the senior Mr. Wilson originally wanted Field, Glore to head the business in the west and Kuhn, Loeb in the east, but that for various reasons, Edward B. Smith & Co. was finally selected. Mr. Walker stated that he might want to offer a slight interest to Kuhn, Loeb & Co. and that while he had not definitely made up his mind to do so, he might ask each member of the group to give up 10% of their total to a pool. However, if there is any resistance, he frankly feels that Field, Glore and themselves should make the contribution.

I told Mr. Walker that as far as we were concerned he could write his own ticket. He stated that probably in the course of the next four or five days further details would be made available to us.

D. R. LINSLEY.

JUNE 27, 1935

EXHIBIT No. 1886

[From the files of Smith, Barney & Co. Original of "Exhibit No. 1867."]

JWC—Re attached letter, Mr. Walker discussed this with Russell, personally, and does not think it necessary for you to reply to it.

(Handwritten:) M. D. file JWC.

M. D.

New York
Boston

WHITE, WELD & Co.,

40 Wall Street, New York, July 8, 1935.

Mr. JOHN W. CUTLER,
Messrs. E. B. Smith & Co.,

35 Nassau Street, New York, N. Y.

DEAR JOHN: You and Burnett Walker for your firm and Ben Clark and I for White, Weld & Co. have had several conversations during the course of the last several months with respect to refunding operations for Wilson & Co., Inc. Inasmuch as the understandings had between us were primarily between yourself and myself, I am sending this letter to you with a chronological history taken from our files on this matter. The history is as follows:

On February 26, 1935 an entrepreneur by the name of M. L. Freeman discussed with us the question of refunding the outstanding bond issue.

During the same week Mr. Freeman demonstrated that he was not merely presenting an idea which is, of course, open field for all free lance promoters but introduced in our office J. D. Cooney, Vice President of Wilson & Co., Inc. and the whole discussion was with respect to the matter of refunding their outstanding bonds. After such discussion, Mr. Cooney said that they would in the next few weeks decide on their program and said he would again discuss with us the question of what sort of a trade we might be able to work out.

We subsequently confirmed with Mr. Halstead Freeman that there was an open field for the business.

We recognized also that of the original houses in the major position on this business, all but one had discontinued activities.

Recognizing, however, that some of the partners of your firm had previously been officers of the Guaranty Co., which had discontinued its business, and not knowing whether you were active in considering this business, we decided to discuss it with you and, if you wished us to do so, join hands with you in its development.

On March 6th Ben Clark saw Joe Swan and advised him of the above and Mr. Clark's report on the meeting states that "Joe was frank to say that they had no discussion so far." Further that Joe said "I do not want to tie you up in any way and I will look into it with the idea that we are two friends and you will hear from me when I get posted."

On March 11th you telephoned to me about this matter, stating that you understood Freeman had been in to see us saying that he had authority to represent the company. You stated that this had been checked with the company and it had been found that Freeman was not authorized to negotiate and you further stated that on account of your close friendship with the Guaranty Trust Co. you had as good a position as anyone to negotiate with Wilson & Co. and it was your thought that we should tell Mr. Freeman we were not in a position to deal with him and that your firm would follow the matter with the company and come back to us as matters developed.

On March 18th you telephoned me saying that the old account at the Guaranty was joint with Hallgarten & Co., that you had talked with Hallgarten & Co., whose Chicago partner is a director of the company, and had arranged that we were to be included in the business. You said further that you hoped it would be agreeable to us to let the matter of our percentage rest for the present as you intended to work out a fair and reasonable place for us. I told you this was satisfactory and left the matter in your hands.

I asked you whether there was any indication of serious competition from other directions and you stated that you did not see how with the friendship of E. A. Potter and Emerich there could be much doubt as to your getting the business. We consequently folded our hands to await developments.

Recently when it became apparent that the business was in the immediate making and not having heard from you, I called your office but could not reach you. Later the same day Burnett Walker telephoned me asking for a review from us of the Wilson & Co. matter as between ourselves and yourselves. I gave him the above story. *Misunderstanding here.*¹

I did not hear further from Burnett Walker but he came over and saw Ben Clark, expressed extreme regret and stated that embarrassing as it was to your firm, we could not be included in the Wilson & Co. business, that Field, Glore & Co. and the company itself had refused your request that we be included.

The above chronological story of this matter is based on memoranda made immediately after the various conversations took place and, hence, is neither hazy in our minds nor subject to misunderstanding or faulty recollection.

The above is not sent to you as a record on which we make any claim on, you for Burnett Walker has already stated your position.

The experience, however, makes it necessary for us to raise a question as to another matter so I request that you show this letter to Joe and ask that he let us know just what he wishes us to understand with respect to the position reserved for us in the matter of Columbia Gas & Electric, about which I have never had any conversation with him but it was cleared with Joe by our mutual good friend, Jim Hutton.

In order that you and Joe may have before you the Columbia Gas & Electric situation, I might say that on April 11th I discussed with Jim Hutton the entire Columbia Gas & Electric situation, as a result of which Jim advised me that so far as he was concerned we could not only participate on original terms but might also appear in the public advertising. He said he would take it up with Joe Swan along these lines and that he, Jim, would advise me what he had been able to work out.

On April 26th Jim told me he had had a very satisfactory talk with Joe and that Joe had agreed with the principle that this firm was to have a participation on original terms and an "appropriate" place in the public advertising.

We here trust that none of you will receive this letter as being in any sense controversial but will also, we believe, recognize the necessity of our knowing at this time just where we stand in regard to this further piece of business which has been discussed with you.

With regards to you all, I am,

Sincerely,

FARIS R. RUSSELL.

¹ Words in italics handwritten.

EXHIBIT No. 1887-1

(Submitted by Smith, Barney & Co.)

Schedule of operations followed by Smith, Barney & Co. when acting in capacity of head manager in wholesaling a new issue

Details	By whom handled	Time
1. Preliminary negotiations between issuing company and head manager referring to contemplated financing.	Buying partner and certain members of Buying Department.	Probably several months before contemplated financing materializes.
2. Looking over properties, audit—If deemed desirable a representative of bankers (who might be an independent engineer) is sent to look over properties. Also arrangements are made to have independent audit of issuing company's books.	Buying Department in conjunction with outside auditing and/or engineering firm.	Probably several months before contemplated financing materializes.
3. Tentative time schedule—drawn up as tentative plan of procedure.	Buying Department, issuing company and respective counsel.	Probably several months before contemplated financing materializes.
4. Registration Statement and Indenture—Our Buying Dept. goes over these documents very thoroughly with counsel.	Prepared by issuing company and their counsel in conjunction with Buying Department and our counsel.	As soon as negotiations are sufficiently advanced to indicate that the deal is under way.
5. Prospectus (Proof). Contract with issuer. Agreement between underwriters (Proof). Selling Group letter (Proof). Letter of Transmittal (Proof).	Buying Department.	As soon as negotiations are sufficiently advanced to indicate that the deal is under way.
6. Selection of Underwriters.	Buying Department.	
7. Information for Underwriters—We keep other Underwriters advised of steps taken in negotiations and important changes made in various documents.	Partners—Buying and Selling—frequently in consultation with officials of issuing company. Buying Department.	As soon as the deal is assured, subject to agreement as to price, etc. From time to time as deal progresses.
8. Preliminary Selling Group list.	Syndicate Department.	Shortly after issue has been registered.
9. Preliminary (red herring) Prospectus (Bringing it up to date). Preliminary (red herring) Selling Group Letter (Bringing it to final form as near as possible, omitting price, discount concession and dated). Letter of Transmittal (final form).	Buying Department. Buying Dept. with approval of Selling partner and Syndicate Department.	Four to five days prior to scheduled offering date. Four or five days prior to scheduled offering date.
10. Qualifications of issue in various states (Blue Sky)—Particular care is taken to see that issue is qualified, where possible, in the various states—Underwriters are advised in this connection, also Selling Group members, upon request.	Buying Department Blue Sky specialist working with counsel for issuer and underwriters.	Several days prior to scheduled offering date.
11. Legality of bonds for Savings Banks and Insurance companies—List of states, if any, where bonds are legal for Savings Banks prepared for use, principally, of Sales Department. Opinion obtained regarding Insurance Companies.	Buying Department prepares forms, with respect to Savings Banks, which are submitted to counsel for opinions. Counsel is requested to render opinion as to legality of bonds for Insurance Companies. Buying Department.	Started in time to receive counsel's opinion few days before scheduled offering date.
12. Statistical Services (Moody's, Poor's, Standard Statistics, etc.) If issuing company approves, we furnish these services with a copy of the registration statement, preliminary prospectus and other information to assist them in determining a rating for the bonds. When ready, they are given a final prospectus and they return to us all material which we had loaned them.		Preliminary information loaned them a short time before scheduled offering date. Final prospectus, as soon as ready.

10. Mailing of Preliminary Prospectus, Letter of Transmittal, and Selling Group Letter to proposed members of Selling Group.	Mailing Department, assisted by Printer and perhaps Western Union under supervision of Buying Department.	So as to reach proposed Selling Group members three (sometimes two or less) days prior to scheduled offering date.
11. Contract—Putting it in final form for signature.	Buying Department.	Probably two or three days prior to scheduled offering date.
12. Agreement between Underwriters—Putting it in final form, obtaining signatures of all underwriters and exchanging copies with Underwriters.	Buying Department. Partner and member of Buying Department.	Probably two or three days prior to scheduled offering date.
13. Registration Statement—Final form.	Issuing company, Buying Department and respective counsel.	Probably two or three days prior to scheduled offering date.
14. Prospectus—Final form.	Buying Department.	Probably two or three days prior to scheduled offering date.
15. Selling Group Letter—final form.	Buying Department with approval of Selling Partner and Syndicate Department.	Probably two or three days prior to scheduled offering date.
16. Advertising—Draft, prepared of proposed advertisement in newspapers.	Draft prepared by Buying Department.—Selling Partner consulted as to papers in which advertisement is to appear. Placed with advertising agencies.	Draft prepared several days prior to scheduled offering date. Given to advertising agencies in final form day prior to scheduled offering date. Released to print as soon as offering is released.
17. Selling Group list—Putting it in final form, both as to names and amounts.	Syndicate Department, under supervision of Selling Partner.	Day prior to scheduled offering date.
18. Preparation of telegram releasing Selling Group members to offer bonds.	Syndicate Department.—Approved by counsel.	Day prior to scheduled offering date.
19. Stenciling of final Selling Group list with copies for use of partner and others in office on offering date.	Mailing Department.	Evening prior to scheduled offering date.
20. Stenciling of Selling Group letters—(Original and duplicate to each member of Selling Group).	Mailing Department.	Evening prior to scheduled offering date.
21. Preparation of lists for use by telegraph companies to fill in amount in each telegram. (Part of list given to both Western Union and Postal).	Stenciled by Mailing Department and amounts filled in and checked by Syndicate Department.	Evening prior to scheduled offering date.
22. Mailing of Final Selling Group Letters and Final Prospectus to Selling Group members.	Mailing Department, under supervision of Syndicate Department.	Evening prior to scheduled offering date.
23. Forwarding supplies of Final Prospectus to Selling Group members and branch offices of Underwriters.	Mailing Department, Printer and perhaps Western Union.	As soon as issue comes out of registration and the definite offering date has been determined. (Cannot be before 20 days after issue goes into registration.)
24. Offering Date—Receipt of acceptances or declinations from Selling Group members by telephone or telegraph—recording same on cards and tabulation sheets—recording of subscriptions or applications for additional bonds if privilege given in Selling Group letter—confirming by telephone or telegraph additional bonds if deemed desirable. Preparing and mailing allotment letters, if any allotment can be made.	Syndicate Department.	As soon as issue comes out of registration and the definite offering date has been determined. (Cannot be before 20 days after issue goes into registration.)
25. Signed Selling Group letters and correspondence—Recording receipt of signed letters from Selling Group members, checking correspondence and making any necessary adjustments.	Syndicate Department.	On offering date.
26. Additional selling operations—If decision is made to establish or extend short position, confirmation of additional bonds by telephone or telegraph.	Selling Partner and Syndicate Department.	Day after offering date.
27. Checking Underwriters and Selling Group members with respect to unsold bonds in each hands.	Underwriters by Selling Partner, Selling Group by Syndicate Department.	Day after offering date and perhaps continuing for few days.

No set time but probably a few days after offering date. Sometimes a second check is made, perhaps a week later.

Schedule of operations followed by Smith, Barney & Co. when acting in capacity of head manager in wholesaling a new issue—Continued

Details	By whom handled	Time
31. Covering short position—Purchases in market, direct from Selling Group members or underwriters. All purchases into Syndicate Trading Account out of which short position was sold.	Market purchases by Trading Department and purchases from Underwriters and Selling Group members by Selling Partner and Syndicate Department.	Sometimes starting the day after offering date and continuing until short position is covered.
32. Temporary Bonds—If bonds are to be delivered in temporary form, the form of temporary bond is prepared.	Buying Department in conjunction with our counsel and issuing company and their counsel.	Soon as practicable after contract has been signed.
33. Delivery Notices—Letters mailed to Selling Group members advising them of date of delivery and payment.	Syndicate Department.	As soon as definite date of delivery is set.
34. Preparation of cards—Form Syn 5—representing total bonds to be delivered to each Selling Group member.	Syndicate Department—prepares cards. Principal and interest figured by Purchase and Sales Department.	As soon as definite date of delivery is set.
35. Preparation of fanfold form CC203 (office working copies) from form Syn 5.	Cashier's Department.	As soon as form Syn 5 is received from Purchase and Sales Department.
36. Recording instructions for delivery and payment on form Syn 5.	Cashier's Department.	As soon as fanfold forms have been completed and instructions are received from Selling Group members.
37. Preparation of closing schedule covering details to be carried out by each of the underwriters supervised by head manager.	Office Manager, Cashier and counsel, working with Buying Department.	On or prior to delivery date.
38. Arrangements made to receive final opinion of counsel on or prior to delivery date.	Buying Department and counsel for head manager.	Several days prior to delivery date.
39. Advance preparation for delivery—Counting, checking and allocating bonds for each Selling Group member by setting aside specified number of bonds with each card (Form Syn 5) and recording bond numbers on Journal copy of fanfold form.	Certain members of Cashier's Department at office of Trustee.	Probably during two days prior to delivery date, the bonds being in possession, and under control of Trustee.
40. Setting up accounts on books—Separate accounts are set up for the Selling Group, Special Sales, Purchase Account for Smith, Barney & Co. and Retail Account.	Office Manager and Cashier.	A few days prior to delivery date.
41. Delivery Date—Meeting of representatives of all Underwriters at office of head manager or other designated place—Presentation of individual checks of Underwriters to representative of issuing company in exchange for bonds. Each Underwriter contributes his share of bonds, against receipt, to be delivered to Selling Group members and to Special Sales, if any, retaining balance for retail sale.	Partner, Office Manager, Cashier and Representatives of Underwriters and the issuing company.	Delivery date.
42. Delivery of bonds to Selling Group members and Special Sales, if any, against payment.	Cashiers Department.	Delivery date and thereafter if bonds not all taken up on delivery date.
43. Accounting between Head Manager and Underwriter—At close of business on delivery date Head Manager accounts to each Underwriter for his proportionate share of funds received from Selling Group members and Special Sales, if any, based on price paid issuing company (difference between cost price and delivery price being retained on books of Head Manager until later date). On any bonds not paid for by Selling Group members on delivery date, Head Manager will account to Underwriters when they are paid for or arrange a loan on undelivered bonds and account to Underwriters in full on delivery date.	Office Manager and Cashier.	At close of business on delivery date.

44. Posting completed transactions on books as permanent record.	Bookkeeping Department.	Day after delivery date when posting is done.
45. Repurchase number system.—If deal is outstanding success and price of bonds to substantial premium, there is a ready market for putting in effect system for checking numbers. However, if there is some resistance and especially if a substantial short position is taken, then a system is established by recording on a small form the name of each participant and the bond numbers delivered to him. These forms are filed numerically.	Cashiers Department.	As soon as possible after repurchased bonds have been delivered.
46. Reporting repurchased bonds.—On all syndicate bonds repurchased in market the numbers are checked against the numerical file and a report is furnished on form No. Syn 11 to the Syndicate Department, where Selling Group members or Underwriters are responsible, and on form No. 3-4-290, where numbers were delivered to customers of Smith, Barney & Co. A copy of each report is available for advising a branch office, if desired. The actual bonds covering reports on form No. Syn 11 are retained in the vault, pending release by Syndicate Department. This is to enable Syndicate Department to redeliver actual numbers repurchased if they have such privilege and elect to do so.	Syndicate Department.	As soon as possible after report is received by Syndicate Department. The underwriter is advised by telephone and date for redelivery is agreed upon.
47. Redelivery of repurchased bonds.—If, as shown by reports on form No. Syn 11 any Underwriters are responsible for repurchased numbers such bonds are redelivered to them at the repurchase cost price provided the agreement between Underwriters gives the manager this privilege.	Syndicate Department.	If a deal is a real success Selling Group is terminated shortly after delivery date, sometimes on delivery date.
48. Termination of Selling Group.—Telegrams or letters are sent to all members of Selling Group advising them that group is terminated and price restrictions are removed. It is customary to notify all Underwriters of our intention to do this and request their approval.	Syndicate Department.	As soon as practicable after selling operations have ceased.
49. Performance list.—Preparation of list showing total sales by Selling Group members and repurchased bonds, if any; also includes table of Underwriters with their interests and amount of bonds retained for retail sale. Copies of this list usually given to larger Underwriters in deal and possibly to certain of other Underwriters upon request.	Syndicate Department.	As soon as practicable after selling operations have ceased.
50. Syndicate Department records.—Performance of Underwriters and each member of Selling Group is entered as permanent record on special card file in Syndicate Department.	Checks drawn by Cashier's Department and letters prepared and mailed with checks by Syndicate Department.	As soon as practicable after termination of Selling Group.
51. Payment of Selling Discount to Selling Group members.—Figured and checked on original Syndicate card. Deductions made for repurchased bonds. Letters mailed with checks show numbers of bonds repurchased, if any, on which penalty is applied as per terms of Selling Group.	Syndicate Department.	Shortly after Selling Group discount has been paid.
52. Analysis of Accounts.—A summary of the various accounts is set up on work sheets in Syndicate Department showing the profit derived by Underwriters on bonds sold to Selling Group and special sales, if any. This accounting is checked against the books in Bookkeeping Department in order that any errors or adjustments may be caught and rectified.	Syndicate Department.	At the time or shortly after accounts are checked against Accounting Department records.
53. Expenses.—Expenses have been accumulating in an expense account set up for this purpose in Accounting Department. These expenses are analyzed and segregated as to expenses which are properly chargeable to Underwriters and those incurred on behalf of Smith, Barney & Co. alone.		

Schedule of operations followed by Smith, Barney & Co. when acting in capacity of head manager in wholesaling a new issue—Continued

Details	By whom handled	Time
<p>54. Final accounting to Underwriters—After all accounts are in proof and the contract and Underwriting Agreement checked to see that all accounting terms have been complied with, the remaining profit due Underwriters is charged with the expenses (properly chargeable thereto, including a reserve to take care of unforeseen future expenses). The compensation due the head manager (so-called management fee) if Underwriting agreement calls for such compensation, is deducted from remaining profit due each Underwriter and checks are mailed accompanied by proper letter of enclosure and statement showing summary of expenses and figuring of profit. Sometimes management fee is paid to Head Manager by other Underwriters on closing day.</p>	<p>Syndicate Department.....</p>	<p>As soon as practicable after accounts are in proof.</p>
<p>55. Distribution of unused reserve—If reserve is not used up the remaining balance is distributed pro rata among the Underwriters.</p>	<p>Syndicate Department.....</p>	<p>Probably 30 to 60 days after final accounting is made to Underwriters.</p>
<p>56. Definitive Bonds—Preparation of permanent bonds to be exchanged for outstanding temporary bonds.</p>	<p>Buying Department in conjunction with our counsel, issuing company and their counsel.</p>	<p>No set time. Definitive bonds of course must be ready at least one month prior to due date of first coupon.</p>
<p>57. Advice to Underwriters and Selling Group members regarding exchange of temporary for permanent bonds—Letters mailed showing date and bank where such exchange may be made.</p>	<p>Syndicate Department.....</p>	<p>As soon as we are officially advised that permanent bonds are ready.</p>

August 1, 1938.

L. G. Tichenor.

EXHIBIT No. 1887-2

[Submitted by Smith, Barney & Co.]

BUYING DEPARTMENT WORK SHEET FORM

(To be used if Edward B. Smith & Co. manager or co-manager)

Name of Company-----
 Amount of Issue-----
 Title of Issue-----
 Leader in Business-----
 Offering Date-----Public Offering-----Private Offering-----
 Handled by-----

SYNDICATE DEPT. MISCELLANEOUS & COMMITMENT

- Syndicate Dept., Treasurer's Dept., and Miss Wells advised of business
- Written notice to Syndicate Dept., Treasurer's Dept., and Miss Wells as soon as commitment taken
- Syndicate Dept. advised of any commitments to others re participations
- Advise Blue Sky man of deal as early as possible
- Advise Blue Sky man of date of audited statements
- Obtain preliminary list of states in which issue to be qualified
- Have Company, where necessary, start preparation of forms
- Get counsel started on "where legal"
- Trip by Underwriters over property arranged, if desirable
- Obtain final list of states in which issue to be qualified

STANDING OF EXPERTS

- Standing of certifying or independent accountants checked
- Standing of any engineers or other experts checked (whether or not named)
- Standing of counsel for Underwriters checked (if not regular attorneys)
- Standing of counsel for Company checked
- Extent of investigation by engineers or independent accounts (if any) ascertained

TRUST AGREEMENT

- Drawn by counsel for Underwriters
- Checked for provisions and form
- Compared with Underwriting Agreement
- Compared with Registration Statement
- Compared with Prospectus
- Approved by Trustee
- Approved by Associate Underwriters
- Approved by Subunderwriters
- Approved by Stock Exchange (if issue to be listed)
- Approved by Company and its counsel
- Approved and initialed by counsel for Underwriters
- Appropriate corporate action taken by Company
- Federal and any State stamp taxes purchased and cancelled
- Executed

REGISTRATION STATEMENT

- Preliminary Draft prepared
- Draft delivered to Associate Underwriters
- Discussed at meeting of Underwriters with Company
- Underwriters checked for desired changes and whether they are satisfied or dissatisfied
- Company furnished with information required of Underwriters
- Company released to name Underwriters
- Registration Statement filed with S. E. C. (without naming Underwriters unless Company released to do so)
- Registration Statement, as filed,
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Checked against latest instructions issued by S. E. C.
 - Checked against Underwriting Agreement

- Checked against Agreement between Underwriters
- Checked against Subunderwriting Agreement
- Checked against Selling Group Letter
- Checked against Indenture(s), Supplement(s), etc.
- Checked against Charter
- Checked against Material Contracts
- Checked against other original sources
- Checked against our files
- Checked against Engineers' or Experts' report
- Checked against report on inspection trip
- Checked against replies to any questionnaire prepared for Company
- Checked by someone not working on deal
- Discussed at meeting of Subunderwriters with Company
- Checked with Subunderwriters for desired changes and whether they are satisfied or dissatisfied
- Counsel for Underwriters
 - Read minute books
 - Checked contract files for material contracts
 - Checked litigation files
 - Checked summaries of Indenture(s), Supplement(s), etc.
 - Checked summaries of Charter
 - Checked summaries of Material Contracts
- First set of Amendments
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
- Second set of Amendments
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
- Third set of Amendments
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked against our files
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
 - Received copies all deficiency memoranda issued by S. E. C.
 - Deficiency memoranda answered to satisfaction of S. E. C.
 - Company released to name Underwriters if not previously released
- Final set of Amendments or Amended Registration Statement (prior to filing)
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
 - Approved and initialed (in whole or in part) by counsel for Underwriters
 - Accountants checked list of subsidiaries
 - Accountants checked Item 45
 - Accountants checked contingent liabilities
 - Signed by accountants named
 - Signed by experts named, if any
 - Approved and initialed by independent accountants and experts not named
 - Registration Statement as Amended, or Final Amendment, filed with S. E. C.
 - Duplicates for Files
 - Before closing, counsel for Underwriters
 - Checked or satisfied with opinion or information on titles
 - Checked or satisfied with opinion on franchises
 - Checked or satisfied with patent opinions

PROSPECTUS

- Preliminary Draft prepared
- Draft delivered to Associate Underwriters
- Suggestions received from Sales Department
- Discussed at meeting of Underwriters with Company
- Underwriters checked for desired changes and whether they are satisfied or dissatisfied
- Reconciliation and tie with Registration Statement prepared
- Company released to name Underwriters
- Company released to file with S. E. C. (without naming Underwriters unless Company released to do so)
- Prospectus, as filed,
- Distributed to Underwriters
- Distributed to Subunderwriters
- Delivered to Blue Sky Man
- Checked against Registration Statement
- Checked against latest instructions issued by S. E. C.
- Checked against Underwriting Agreement
- Checked against Agreement between Underwriters
- Checked against Subunderwriting Agreement
- Checked against Selling Group Letter
- Checked against Indenture, Supplement(s), etc.
- Checked against Charter
- Checked against other original sources
- Checked against our files
- Checked against Engineers' or Experts' report
- Checked against report on inspection trip
- Checked against replies to any questionnaire prepared for Company
- Checked by someone not working on deal
- Suggestions received from Sales Department
- Discussed at meeting of Subunderwriters with Company
- Checked with Subunderwriters for desired changes and whether they are satisfied or dissatisfied
- First Amended Prospectus
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
- Second Amended Prospectus
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
- Third Amended Prospectus
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Company released to file with S. E. C.
 - Corrected to satisfy any requests of S. E. C.
 - Instructions received from Syndicate Dept. and given re printing and distributing Red Herring Prospectus, if any
 - Red Herring Prospectus, if any, distributed to proposed Selling Group
- Final Prospectus (prior to filing)
 - Distributed to Underwriters
 - Distributed to Subunderwriters
 - Read and checked
 - Underwriters checked for desired changes
 - Subunderwriters checked for desired changes
 - Delivery date checked with Syndicate and Treasurer's Depts.
 - Front page checked against inside
 - Order of names in imprint arranged

- Reconciliation and Tie with Registration Statement revised
- Approved and initialed (in whole or in part) by counsel for Underwriters
- Accountants checked summary of Earnings, Balance Sheet or Working Capital and Item 45 in Prospectus
- Signed by accountants named
- Signed by experts named, if any
- Approved and initialed by independent accountants and experts not named, if any
- Company released to file with S. E. C.
- Signed by President of Company
- Final Prospectus filed with S. E. C.
- Prospectus released for printing and obtaining from Syndicate Dept. instructions as to quantities and mailing instructions and giving instructions as to deliveries
- Prospectus released for distribution (after clearance from S. E. C. as to effectiveness of Registration Statement)

CONTRACT

I. Preliminary Agreement, if any, between Company and Underwriters

(To be initialed at beginning of negotiations or prior to release of Red Herring material to dealers if Underwriting Agreement is not to be signed by that time)

- Draft approved by counsel for Underwriters
- Draft approved by negotiating partner
- Draft approved by Underwriters
- Draft approved by Company and its counsel
- Initialed by Company and Underwriters
- Initialed or conformed copies distributed to Associate Underwriters
- Conformed copies to Syndicate and Treasurer's Depts.

II. Underwriting Agreement

- Draft submitted to counsel for Underwriters
- Draft submitted to negotiating partner
- Draft submitted to Sales Department
- Draft submitted to Syndicate Department
- Draft submitted to Treasurer's Department
- Draft submitted to Associate Underwriters
- Draft submitted to Company and its counsel
- Final draft checked against Indenture or Charter
- Final draft checked against Registration Statement
- Final draft checked against Prospectus
- Final draft checked against Agreement between Underwriters
- Final draft checked against Subunderwriting Agreement
- Final draft checked against Selling Group Letter
- Final draft satisfactory to Underwriters
- Final draft satisfactory to Company and its counsel
- Checked by someone not working on deal
- Approved and initialed by counsel for Underwriters
- Delivery to Company of authorization, if manager(s) to sign alone and if requested, to sign in behalf of Underwriters
- Underwriting Agreement signed
- Execution of Escrow Agreement, if any
- Company released to file Underwriting Agreement with S. E. C.
- Executed copies distributed to Underwriters
- Conformed copies to Syndicate and Treasurer's Departments
- Duplicates to files

III. Agreement between principal Underwriters

- Draft submitted to counsel for Underwriters
- Draft submitted to negotiating Partner
- Draft submitted to Sales Dept.
- Draft submitted to Syndicate Dept.
- Draft submitted to Treasurer's Dept.

- Draft submitted to Associate Underwriters
- Final draft checked against Registration Statement
- Final draft checked against Prospectus
- Final draft checked against Underwriting Agreement
- Final draft checked against Subunderwriting Agreement
- Final draft checked against Selling Group Letter
- Final draft satisfactory to Underwriters
- Checked by someone not working on deal
- Approved and initialed by counsel for Underwriters
- Signed (this should be done prior to execution of Underwriting Agreement if latter is not to be signed by all Underwriters)
- Executed copies distributed to Associate Underwriters
- Conformed copy to Syndicate and Treasurer's Departments
- Duplicates to files
- If manager(s) to sign Underwriting Agreement alone and *it is requested by Company*, execution by Underwriters of brief authorization for manager(s) to sign Underwriting Agreement in their behalf. This should be done prior to execution of Underwriting Agreement

IV. Subunderwriting Agreement (if any)

- Draft submitted to counsel for Underwriters
- Draft submitted to negotiating Partner
- Draft submitted to Sales Dept.
- Draft submitted to Syndicate Dept.
- Draft submitted to Treasurer's Dept.
- Draft submitted to Associate Underwriters
- Draft submitted to proposed Subunderwriters
- Letter of Transmittal to accompany draft submitted to proposed Subunderwriters prepared
- Letter of Transmittal approved and initialed by counsel for Underwriters
- Letter of Transmittal signed by Underwriters
- Final Draft Agreement checked against Registration Statement
- Final Draft Agreement checked against Prospectus
- Final Draft Agreement checked against Underwriting Agreement
- Final Draft Agreement checked against Agreement between Underwriters
- Final Draft Agreement checked against Selling Group Letter
- Final Draft Agreement satisfactory to Underwriters
- Checked by someone not working on deal
- Approved and initialed by counsel for Underwriters
- Signed
- Executed copies distributed to Subunderwriters for acceptance
- Final copy to Syndicate and Treasurer's Departments
- Duplicates to files

IVa. Confirmation of participants' interests (if issue is not registered)

- Letters prepared, approved and initialed by counsel for Underwriters
- Letters sent to participants confirming interests
- Replies received from participants
- Copies of above to Syndicate and Treasurer's Departments

V. Selling Group Letter

- Draft submitted to counsel for Underwriters
- Draft submitted to negotiating Partner
- Draft submitted to Sales Dept.
- Draft submitted to Syndicate Dept.
- Draft submitted to Associate Underwriters
- Draft submitted to Subunderwriters
- Final draft checked against Registration Statement
- Final Draft checked against Prospectus
- Final draft checked against Underwriting Agreement
- Final draft checked against Agreement between Underwriters
- Final draft checked against Subunderwriting Agreement
- Final draft satisfactory to Subunderwriters
- Final draft satisfactory to Underwriters
- Final draft satisfactory to Sales Dept.

- Final draft satisfactory to Syndicate Dept.
- Checked by someone not working on deal
- Approved and initialed by counsel for Underwriters
- Red Herring copy distributed to dealers
- Copy marked Exhibit—Attached to Agreement between Underwriters
- Released to Syndicate Department
- Copy to Treasurer's Dept.
- Letter of Transmittal, if any, to accompany Red Herring Selling Group Letter prepared
- Letter of Transmittal, if any, approved by counsel for Underwriters
- Letter of Transmittal, if any, approved by Underwriters

ADVERTISEMENT

- Copy prepared
- Copy furnished to Blue Sky Man
- List of states and Associate Underwriters furnished to Blue Sky Man
- Copy and insertion date given to Publicity Dept.
- Advertisement checked against final Registration Statement as Amended
- Advertisement checked against final Prospectus
- Advertisement checked against latest instructions issued by S. E. C.
- Approved and initialed by counsel for Underwriters
- Approved and initialed by Company and its counsel
- Instructions given re variations of imprint
 - a. Edward B. Smith & Co.
 - b. Edward B. Smith & Co., Inc. (Not to appear as Underwriters)
- Clearance from Blue Sky Man re list of papers
- Advertisement released
- News story, if any, approved and released

BLUE SKY

- Furnished with copy of prospectus
- Furnished with copy of Advertisement
- Furnished with list of Underwriters
- Information to be furnished to Company by Underwriters
 - Advised of specific information requested
 - Advised Associate Underwriters
 - Assembled information furnished to Company
 - Cleared list of states in which issue to be qualified
 - Sales Dept. advised re qualification
- Copy of Prospectus filed with N. Y. Stock Exchange—Committee on Public Relations.

LEGAL AUTHORIZATIONS AND OPINIONS

- Necessary directors' authorization obtained
- Necessary stockholders' authorization obtained
- Clear whether offering to stockholders necessary
- Ascertain no option to others on financing
- Company's other issues checked for conflicting provisions
- Opinions received prior to or at closing re
 - Pledge of collateral, property, etc.
 - Titles
 - Franchises
 - Patents, if necessary
 - Legality for savings banks and trust funds
 - Validity of issue by counsel for Underwriters
 - Opinion obtained from foreign counsel, if necessary, for foreign issue
 - Opinion obtained from local counsel, if necessary, where Company incorporated in a different state than residence of counsel for Underwriters
- Clearance from counsel for Underwriters re
 - I. C. C. (Railroads, Motor and Water Carriers)
 - Public Service Com.
 - Federal Power Com.
 - Securities and Exchange Com. (public utilities)
 - Federal Communications Com. (Telephone & Telegraph)
 - Federal Trade Commission and/or opinion by Attorney General of U. S.
 - Secretary of War (Toll Bridge)
- Any other public commissions or bodies

CANADIAN OR OTHER FOREIGN ISSUES

- State Dept. approval obtained
- Checked for unusual provisions
- Authorization for our representative to sign
- Arrangements made to cover exchange
- London Office given opportunity to place deposit

MOODY'S AND STANDARD STATISTICS

- If issuing company consents, send to Standard Statistics (Attention—Mr. D. Di Palma) and Moody's Investors' Service (Attention—Mr. J. A. Dittrich)
- Set Registration Statement, Financial Exhibits and Prospectus as filed originally (marked "Subject to Change")
 - Set latest available amendments or draft amended Registration Statement, Financial Exhibits and Prospectus two or three days prior to effective date (marked "Subject to Change")
 - Set as soon as available of final Amendments or amended Registration Statement, Financial Exhibits and Prospectus
 - Pick up sets previously furnished

MISCELLANEOUS

- Extent to which counsel for Underwriters have checked Prospectus and Advertisement (if large) against Registration Statement for omissions and differences.
- Experts satisfied with Registration Statement and Prospectus confirming by letter re omissions, etc.
- Experts' reports received
- Registration effective
- Certificates, etc. obtained

LISTING ON EXCHANGE

- Arrangements made for "when issued" listing, if desirable
- Sales Department's release to file application
- Application filed with Stock Exchange by Company
- Company furnished with Distribution List
- Application approved by Stock Exchange
- Company advised of closing of Selling Group, etc.
- Form 10 filed with S. E. C. by Company
- Request Company to file request for waiver of part required period under S. & E. Act
- Notice of date to be admitted to trading to Syndicate & Trading Depts.

INTERIMS OR TEMPORARIES

- Form prepared by counsel
- Form checked with Indenture or Charter
- Form checked with Underwriting Agreement and Prospectus
- Form approved by Company and its counsel (if temps.)
- Form approved by Trustee
- Form approved by Stock Exchange (if issue to be listed)
- Form approved by counsel for Underwriters
- Printing arranged (by us if interims, by Co. if temps.)
- Signing arranged

DEFINITIVES

- Form prepared by counsel
- Form checked with Indenture or Charter
- Form checked with Underwriting Agreement and Prospectus
- Form approved by Company and its counsel
- Form approved by Trustee
- Form approved by Stock Exchange (if to be listed)
- Form approved by counsel for Underwriters
- Engraving or printing arranged by Company
- Signing arranged
- Notice of exchange to Underwriters, Subunderwriters, Selling Group and our holders

DELIVERY AND PAYMENT

- Date cleared with Treas. and Syndicate Depts.
- Closing procedure prepared by Treasurer's Dept.
- Closing procedure approved by counsel for Underwriters
- Closing procedure approved by Company and its counsel
- Company notified as to denominations
- Company notified of costs (legal fees, etc.)
- Arrangements made for Treasurer's Dept. to prepare for delivery
- Final clearance obtained from counsel for Underwriters
- Treas. Dept. released to make payment
- Delivery and payment made

EXPENSES

- Expense provisions of Underwriting Agreement to Synd. & Treas. Depts.
- Syndicate Department notified of any costs
- Fee of counsel for Underwriters approved by Negotiating Partner
- Fees of accountants and engineers retained by Underwriters approved by Negotiating Partner
- Commission to intermediary approved by Negotiating Partner

RECORDS

- Signed Agreements placed in safe-keeping
- Signed Prospectus, and Registration Statement sent to Files
- Legal opinions, records, reports and correspondence sent to Files
- Buying Department Memo. prepared re
 - Inspection trip
 - Investigation for Record
 - Particular Covenants (to Miss Wels)
- Information to be furnished periodically, if any, by Company per Underwriting Agreement and whether we are to make arrangements per Agreement between Underwriters to distribute this information (to Librarian)
- Record made re business obtained to banking connections
- Pink Sheet written re phases not covered by Syndicate Dept. pink sheets

MARCH 9, 1937.

Distribution of drafts of registration statement

Issue.....

(If company files amendments to registration statement filed originally)

	Drafts						Registration Statement as filed initially	First Amendment, Drafts Final	Second Amendment, Drafts Final	Third Amendment, Drafts Final	Final Amendment
	#1	#2	#3	#4	#5	#6					
Underwriters' counsel.....											
Underwriters.....											
Experts for Underwriters.....											
Negotiating Partner.....											
Partners (?).....											
London Office (For. only).....											
Moody's.....											
Standard Statistics.....											

It is, of course, not necessary or advisable to send copies of each draft to all of the foregoing. The distribution will vary from deal to deal and in case of doubt the Negotiating Partner should be consulted. Distribution of drafts outside the office can usually be best handled by giving the printers instructions for direct delivery or mailing; inside the office, by giving instructions to Mr. —.

Issue.....

Distribution of drafts of registration statement

(If company files amended registration statement)

	Drafts						Registration statements as filed initially	Drafts						Final amend- ed registra- tion state- ments
	#1	#2	#3	#4	#5	#6		#1	#2	#3	#4	#5	#6	
Underwriters' counsel.....														
Underwriters.....														
Experts for Underwriters.....														
Negotiating Partner.....														
Partners (?).....														
London Office (For. only).....														
Moody's.....														
Standard Statistics.....														

It is, of course, not necessary or advisable to send copies of each draft to all of the foregoing. The distribution will vary from deal to deal and in case of doubt the Negotiating Partner should be consulted. Distribution of drafts outside the office can usually be best handled by giving the printers instructions for direct delivery or mailing; inside the office, by giving instructions to Mr. —.

EXHIBIT No. 1887-3

[Submitted by Smith, Barney & Co.]

MEMORANDUM FOR INDUSTRIAL DIVISION OF BUYING DEPARTMENT

INDUSTRIAL INVESTIGATIONS

Outline for use as guide in conducting investigations of industrial companies

[Revise of November 1930. Approved: K. Weisheit]

MEMORANDUM FOR INDUSTRIAL DIVISION OF BUYING DEPARTMENT

INDUSTRIAL INVESTIGATIONS

The attached outline has been compiled for use as a guide for members of this Department in conducting investigations of industrial companies. The amount and character of the data must of necessity be adjusted in each case to fit the particular situation and the purpose and scope of the investigation.

This outline is in form believed to be convenient for use while conducting an investigation, but its form and order are not such as should be followed necessarily in connection with the preparation of a report on the investigation.

Form of report.—In the preparation of the report, the following form (with such variations as may be required to fit the particular case) is recommended:

A. On the outside cover of the report, the following should be clearly stated:

- (1) **SUBJECT**, which should not consist merely of the name of the Company investigated but should be descriptive, i. e., "Financial Condition of X Y Z Company", etc.
- (2) **DATE** of the report.
- (3) **Name** of the investigator

B. On the first pages of the report, the following should be presented in the order given:

- (1) A statement of the **PURPOSE** and **SCOPE** of the investigation. (It will frequently be helpful to state the purpose in the form of definite questions which the investigation is designed to answer.)
- (2) A brief **SUMMARY** of the salient features of the report, especially those on which the conclusions are based.
- (3) The **CONCLUSIONS** of the investigator, which should be so stated as to present the answers to the questions which prompted the investigation.

C. On the next page following should be given a complete **INDEX** to the report.

- D. Next should follow the body of the report proper, which should contain the information which the investigation was designed to obtain, in whatever detail may be required by the scope and purpose of the investigation.

No form or order for the presentation of the body of the report is suggested, as this must necessarily vary considerably according to its purpose and nature. In general, however, it is advisable to bring out the more important facts first while at the same time keeping the order as logical as possible. In the interpretation of statistical data graphic illustrations should be utilized whenever practical.

- E. All other useful information obtained during the investigation, which either does not bear directly on the points under consideration or which is in too great detail to be presented in the report proper, should be segregated in an appendix. This may be either attached at the back of the report or bound separately, according to the nature and volume of the data in such appendix.

K. WEISHEIT.

NOVEMBER 1930.

FINANCIAL

List of financial statements, schedules and data to be obtained. It should be noted that this list is given merely as a guide and must be adjusted in each case to fit the particular situation being investigated. The periods to be covered by the various statements, as given in this list, are also merely suggestions and must be changed to fit the requirements of the situation.

* * * * *

I. BALANCE SHEET

Comparative Balance Sheets—for past 5 fiscal years and as of latest possible date—in approximately the form shown on page 16, with such variations and additional items as may be necessary to fit the business or accounting methods of the Company.

NOTE.—In the case of a holding company or a company having important subsidiary companies, separate balance sheets should be obtained showing consolidated balance sheet, balance sheet of the parent company alone and separate balance sheets of each important subsidiary (this should preferably be set up in tabular form on one sheet, showing inter-company eliminations, with the last column showing a consolidated summary from which inter-company items have been eliminated).

Schedules and other data relative to Balance Sheets

- A. *Receivables.*—1. Statements—as of latest date only—showing—

- (a) Each class (notes, accounts and acceptances) subdivided into those received from customers, officers and employees, and from others, with explanations of those received from others.
- (b) List of those secured by collateral and statement of such collateral.
- (c) Overdue items in each class listed according to age.
- (d) Advanced datings listed according to due dates.
- (e) Detailed list of largest items in each class with due dates.
- (f) Statement of any receivables pledged, notes discounted, or endorsements given on notes of associated companies, with explanation of liability.

2. *Bad Debts.*—Statements—as of latest date only—showing—

- (a) Statement showing amount and percentage of sales and/or total receivables charged off in each of the years covered by the financial statements.
- (b) What is policy as to setting aside reserves for doubtful accounts?
- (c) What contingencies would operate to reduce the value of the Company's receivables? (This applies particularly in case product is sold chiefly to some special class).

B. *Marketable Securities*—latest only—detailed list showing par, cost, book and market values.

C. *Inventories and Cost System.*—1. Comparative statement of inventories—for 5 years and quarterly or monthly for past 2 years—showing division into

raw materials, goods in process, finished products, and other materials and supplies, and main subdivisions of each class.

2. Statement explaining how inventories are carried on books, how often inventories taken, and how often values are adjusted to changes in market. Is it possible for investigator to make spot-check?

3. Cost System.—

- (a) Does Company keep a running inventory?
- (b) At what prices are inventories carried at various stages?
- (c) How often adjusted to market?
- (d) Are any inter-department or inter-company profits reflected in inventories?
- (e) On what basis is unproductive labor carried into costs?
- (f) What items of overhead are carried into costs and how allocated?
- (g) Are by-products handled separately or their proceeds used to reduce costs of chief products?
- (h) Is cost system on a standard or actual basis? If standard costs are used how often are they adjusted to actual costs?
- (i) What is the margin of error in cost system on final inventory and audit as shown by past experience?

D. *Plant and Property Account*.—1. Statement, subdivided into main classes of property, and showing depreciation or depletion reserve applicable to each, approximately as follows:

Land used as site for plant.
 Other land used in business.
 Improvements on land used in business.
 Buildings used for manufacturing.
 Other buildings used in business.
 Machinery, equipment, etc.
 Furniture and fixtures.
 Property owned but not used in business.

(These subdivisions are suitable for most manufacturing companies, but in case of certain companies important property will come under such heads as ore, coal or oil lands, rolling stock, etc.).

2. Explanation of basis used in determining book values of properties.
 3. Copies of any appraisals, signed if possible. Note particularly date, basis, and for what purpose made.

4. Explanation of any writeup (or down) of property account.

5. Leased property—

Are leases capitalized and if so on what basis. Cost, terms rental and renewal factors.

To what extent are improvements to leased property capitalized and how are they amortized?

6. Depreciation and Depletion—

- (a) What is Company's policy as to depreciation and depletion?
- (b) Schedule of depreciation and depletion rates used.

7. Maintenance.—

- (a) If possible obtain schedules showing expenditures for maintenance.

8. Obsolescence—

- (a) To what extent does obsolescence enter into business?
- (b) Is it adequately provided for?

E. *Investments in Associated Companies*—latest only—list of companies showing par and book values (before and after elimination of intangibles) of securities of each which is owned, totals outstanding, and percentages owned.

F. *Advances to Associated Companies*—latest only—list of amounts due from each and explanation of origin of indebtedness or reason for advance. Security if any? What is repayment schedule?

G. *Deferred Charges*—latest only—statement showing subdivision into principal items, such as prepaid insurance, prepaid interest, bond discount, etc. Are there any items which should have been charged to operations, such as advertising, etc.

H. *Goodwill*—

- (a) Basis for valuation.
- (b) To what extent are development and research costs capitalized?

I. *Patents*.—

- (a) How valued and expiration dates of most important.

J. *Notes Payable*.—1. Statements—5 years and quarterly or monthly for past 2 years—subdivided into those given for merchandise to banks, and sold through brokers, classified according to maturities, and separate list of those secured by collateral with statement of such collateral.

2. Explanation of any notes given for merchandise.

3. *Current Borrowings*—

(a) List of bank accounts, showing lines of credit, present borrowings and balances, and rates and commissions paid.

(b) Relations with banks, noting especially any interlocking directors, etc.

(c) Are bank lines clean, or if secured what sort and margin of collateral is required?

(d) What are maximum and minimum borrowing periods and amounts?

K. *Accounts Payable*.—

1. Statement—latest only—classified according to due dates, with explanation of any over-due accounts.

2. What is Company's policy in regard to meeting its accounts payable? Does it discount all bills?

L. *Federal Taxes*.—1. On what basis does Company set up reserves for Federal taxes?

2. What years' tax returns, if any, have been checked by Government officials?

3. Full details of any tax questions which may be in dispute or might be a contingent liability.

M. *Reserves*—latest only—explanation of nature of each and whether amounts are based on expected demands or contingencies, or have been set up largely for tax purposes.

N. *Capitalization*.—1. Funded debt—statement, as to each issue, showing amounts authorized, issued, held in treasury, held in or retired by sinking fund, and outstanding.

2. Stock—statement, as to each class, showing amounts (par value and number of shares) authorized, issued, held in treasury, retired, and outstanding. Are there any options or warrants outstanding for the purchase of the Company's stock, and if so to whom and at what prices?

3. Has Company any liability or obligation, either direct or contingent, in connection with any outstanding issues, either funded debt or stock, of subsidiary or associated companies?

4. Minority interest in subsidiaries—Amounts and class of stock held by them.

O. *Contingent Liabilities*.—1. Has Company any contingent liabilities? If so, explain.

2. Has Company any important law suits now pending or in prospect?

P. *Unusual Items in Balance Sheet*—Explanation.

Q. *Monthly trial balances* from date of latest balance sheet to present time.

R. *Mortgages or Liens on Equipment*.—Do any exist? If so, what on, to whom payable and maturity dates?

S. *Separate Balance Sheet* for each affiliated or associated company, together with all necessary supporting data, along the lines of the statements relating to the Company and its subsidiary companies.

II. EARNINGS

Comparative Statements of Earnings—for past 5 fiscal years and for the latest period available—in approximately the form shown on page 17, with such variations and additional items as may be necessary to fit the business or accounting methods of the Company.

Note: In the case of a holding company or a company having important subsidiary companies (especially if not 100% owned), separate statements should be obtained covering consolidated earnings, earnings of the parent company alone and separate earnings of each important subsidiary.

Schedules and other data relative to Statements of Earnings

A. *Division by Products*—in case the Company has a variety of products, show sales, costs and profits for each product or class of products for the period covered by the Earnings Statements.

B. *Selling Expenses*—2 years only—divided according to—

1. Direct expenses (subdivided into salaries, traveling, branch offices, etc.) ;
2. Advertising (subdivided into newspaper, periodical, radio, sign board, circulars, catalogues, etc.).

C. *Administrative Expenses*—2 years only—subdivided into main classes.

D. *General and Miscellaneous Expenses*—2 years only—subdivided into main classes.

E. *Other Income*—details for period covered by Earnings Statements and explanation of any non-recurring items.

F. *Explanation*—of any unusual items in Earnings Statements.

G. *Separate Statements of Earnings* for each affiliated or associated company (and for branches, if deemed necessary, as in the case of chain stores), together with supporting data, along the lines of the statements relating to the Company and its subsidiary companies.

II. How are profits treated on uncompleted contracts?

III. SURPLUS ACCOUNTS

Comparative Statements of Surplus Account—for period covered by Balance Sheets and Earnings Statements—showing—

- (a) Surplus at end of previous year as per Balance Sheet;
- (b) Surplus Earnings for year (after dividends) as per Earnings Statement;
- (c) Plus and minus adjustments, with detailed explanation;
- (d) Surplus at end of year as per Balance Sheet; and
- (e) Division of Surplus into Capital Surplus and Earned Surplus.

IV. MISCELLANEOUS

A. Are Company's books audited? If so by whom? Is it a balance sheet audit only, or does it cover also income statements and surplus account? Copies of all audits, signed, if possible.

B. How has Company come through periods of depression in the industry?

C. Forecast of receipts and disbursements and cash position for succeeding six months (compare any previous estimates with actual results to test reliability of estimates).

D. If practicable, statement of actual cash invested in business.

E. What use is made of acceptances and would their use be advantageous?

F. Previous financing—amounts of each class of stock, warrants, options, and funded debt issued for cash, property, services, etc.; issue prices; how offered (to stockholders or public) and by whom.

G. Where are bonds and stocks listed and their chief markets? Price range by years (high and low) for each issue since its issuance.

H. Digest of provisions of all issues of funded debt, stock and warrants. Preemptive rights of stockholders as to stock issued for cash, property or services.

I. Stock control—statement of stock distribution, number of holders of each class and list of largest. Voting provisions.

J. Dividends—record of dividends paid on each class of stock, subdivided into cash and stock dividends, regular declarations and extras, and explanation of any rights given stockholders.

K. What impression is gained as to the general efficiency of the Company's financial policies and accounting methods?

L. Comparison with competitors in respect to financial condition, return on invested capital, sales turnover, etc.

GENERAL DATA CONCERNING THE COMPANY AND THE INDUSTRY

The following outline refers particularly to manufacturing companies and in cases of companies engaged in a trading or other non-manufacturing business must necessarily be adjusted to suit the circumstances.

I. HISTORY AND BUSINESS

A. Brief history of Company, including time and place of inception of business, date and State of incorporation, any changes in name or type of business, consolidations, reorganizations, etc., with special reference to any financial, legal or operating difficulties through which the Company has passed.

B. Location of plants and products manufactured in each.

C. List of all subsidiary and associated companies, showing Company's ownership in each.

D. Description of business of each subsidiary and associated company showing how it fits into the general scheme.

E. Explanation of methods of inter-company business.

F. Corporate chart presenting graphically relation between the Company and its subsidiary and associated companies.

II. MANAGEMENT

A. List of officers and directors, with notation of their chief outside connections or interests. Organization chart showing lines of authority.

B. What is management's experience in the industry and with the Company? Previous history and experience of management.

C. Is it a one man management, or a well rounded organization with competent understudies?

D. Are officers on long term contracts at high salaries? Is any bonus system provided?

E. What impression is gained as to the honesty, caliber and efficiency of those directing the Company's affairs, and particular fitness for place filled?

F. How much of Company's stock does management hold and variation in holdings? Stock market activities?

III. CHARACTER OF PRODUCT

A. Is product a necessity, a habit commodity (such as tobacco or coffee), or a luxury? A consumer's product or manufacturer's product.

B. How is its use affected by changes in styles, season, weather or other variable conditions?

C. What is its use in relation to other lines of business, and how is demand affected by condition of other industries or the general business situation?

D. Is it subject to deterioration or obsolescence and what is the renewal demand?

E. Is it a large or a small unit?

F. Is it a standard or specialty line?

G. What are the factors governing prices in the industry, with particular reference to those which may cause sudden fluctuations? In other words, what proportion of the total cost of the finished product is attributable to (1) labor, (2) raw materials, and (3) overhead, and possible economies in these costs? Cost trends?

H. Is product protected by tariff or other legislation and how would it be affected by any change?

I. Is any legislation pending or probable which would affect the industry?

J. What proportion of Company's business represents manufacture and sale of replacement parts?

IV. RAW MATERIALS

A. What raw materials are used and what is the source and stability of the supply? Time required to secure raw materials.

B. Table of prices, annual production, annual consumption, etc., of principal raw materials.

C. What are the factors governing prices of raw materials, with particular reference to those which may cause sudden fluctuations? Are prices artificial (supported by cartels or any organized effort) or does demand and supply have free play?

D. What is present situation, particularly if raw materials are agricultural products or otherwise subject to variation according to season?

E. Does Company by necessity or policy speculate in raw materials, or pursue a hand-to-mouth buying policy, and what storage facilities has the Company?

F. Is any conservation legislation pending or probable which would affect the supply of raw materials?

G. Other pertinent information to show whether the industry and the Company have a sound basis in regard to raw materials, as to present and future supply, storage, fire hazards, deterioration, etc.

V. INTEGRATION AND DIVERSITY

A. To what extent is Company integrated (both vertically and horizontally) and how does this affect its ability to meet competition?

B. What is the possibility of further integration? Would this be beneficial either in meeting competition or in efficiency of operation?

C. What is the diversity of the Company's products? Does diversity level out production curve with respect to seasonal factors? Does diversity of products tie in with main plan of manufacture and distribution, or do products require different manufacturing and sales methods?

D. What is the practicability of increasing diversity, with special reference to the possibility of some developments which would curtail the demand for a product, necessitating the development of new products?

E. Are the products too diverse for economical manufacture?

VI. COMPETITION

A. What is Company's rank in the industry and for how long has it been held?

B. List of leading competitors with information as to relative size and importance.

C. Comparison of Company's product with that of leading competitors, as to cost of production, quality, selling price, reputation, special features, etc.

D. Is there any outstanding product in the industry whether made by the Company or a competitor?

E. Is Company's product protected by patents or otherwise, giving it an advantage in competition? Have they been litigated? Does Company have any secret processes?

F. How is Company's ability to meet competition affected by location of its plants with respect to transportation, raw material supplies, power, labor and markets?

G. How is competition, or possibility of future competition, affected by requirements for operation in the industry as regards experience, skill, control of raw materials, exclusive contracts, etc.

H. What is the situation as to possible competition from substitutes?

I. Has Company or any competitor ever been investigated by the Federal Trade Commission, or is such investigation likely? (Obtain copy of Federal Trade Commission report).

J. Does Company operate under licenses from others or grant licenses under its patents to competitors and what are royalty arrangements?

VII. MARKETS

A. Location of Company's principal markets and relative importance of each.

B. In what area do transportation costs give the Company an advantage over competitors? How permanent is this likely to be?

C. What are Company's estimates of potential markets and on what facts are they based? (This is especially important if any expansion is contemplated).

VIII. SELLING POLICY AND METHODS

A. To what class of customers does Company sell, i. e., to wholesalers, jobbers, retailers or direct to consumers, and what percentage to each?

B. What are relations of Company with its customers?

C. List of largest customers, showing amounts purchased by each during past year.

D. Description of Company's selling organization and sales methods, and method of paying salesmen.

E. What are the usual terms as to time and method of payment? Goods returned?

F. What discounts and commissions are allowed, and how do these compare with those of competitors?

G. How do Company's prices compare with those of competitors?

H. Statement—current and monthly for past 5 years—showing advance bookings, gross sales and returns, sub-divided into main classes of products, giving both values and units in each case.

I. List of all sales contracts with summary of each, showing period covered, amount, contract prices (in comparison with current prices), delivery terms, and any special clauses covering cancellations, penalties, etc.

J. Description of credit and collection organization and methods (examine representative credit files).

K. What are relations between credit and sales departments, and do they facilitate co-operation?

L. What is policy regarding adjustments on unsatisfactory goods, and what has been Company's experience in this respect?

M. What is Company's advertising policy? How much does it spend and what is its budget for the current year?

N. What is Company's merchandising policy with respect to carrying inventory for customers?

O. How recently has market survey been made and sales budget prepared, and what has been actual experience in relation to budget?

P. Contracts with credit companies to finance sales.

IX. OPERATING POLICY AND METHODS

A. Description of operating processes, with special reference to any unusual features, and time consumed in manufacturing operations.

B. Does Company manufacture to fill orders, or on production schedule based on anticipated demand?

C. What is current schedule of production and estimated output for period in advance?

D. What has been Company's experience in respect to the accuracy of its estimates of future demands?

E. Does Company use machinery to the fullest extent practicable, or is operation unduly expensive because of unnecessary hand labor?

F. What impression is gained as to the efficiency of the routing system?

G. What impression is gained as to the general efficiency of Company's manufacturing methods?

H. What is Company's policy in regard to experimental and development work? Is it keeping abreast with scientific developments in industry with particular reference to new machines and processes? Is it spending unreasonably large amounts on such work?

I. Does Company contemplate any material changes in its policy and methods, and if so what will be the probable effect of such changes?

J. Effect of any seasonal factors on Company's operating policy and attempts to straighten out any seasonal fluctuations.

K. Does Company make any attempt to reclaim or otherwise utilize scrap materials?

X. INVENTORIES

A. Statement of inventories—for past 5 years and quarterly for past 2 years—expressed in quantities of materials, sub-divided into raw materials, goods in process, finished products, other materials and supplies, and main subdivisions of each.

B. What is the method of valuation of inventories?

C. Comparative statement—for the past 5 years—showing inventory prices per unit compared to market prices.

D. What contingencies would materially affect the value or saleability of the inventory?

E. Division of present inventories into—

1. Readily saleable at inventory prices.
2. Not readily saleable because of
 - (a) lack of demand;
 - (b) length of manufacturing process; or
 - (c) some other circumstances affecting saleability.
3. Obsolete or deteriorated.

F. Where are inventories located?

G. Latest detailed physical inventory.

H. What period of production is provided for by raw materials now on hand and how does this compare with normal?

I. Estimated most desirable normal inventory (approximate only) within maximum and minimum limits.

XI. PURCHASING POLICY AND METHODS

A. What determines the purchasing policy, i. e., does Company buy only to fill orders, or because prices are believed to be low? To what extent does it speculate on market?

B. Where and how does Company purchase materials? List of its chief sources of supply.

C. What are relations between Company and those from whom it purchases?

D. What methods are used in making payment for goods purchased?

E. Are purchasing methods sufficiently flexible to permit quick adjustment in period of depression?

F. List of all purchase contracts with summary of each, showing period covered, amounts contracted for, contract prices (comparison with present market), delivery terms, and any special clauses covering cancellation, penalties, etc.

XII. LABOR

A. What class of labor is employed in the industry, and how long is training period?

B. Is labor in the industry unionized? If so does Company operate on closed or open shop basis?

C. What is the record of strikes, etc., with special reference to the Company?

D. Does Company operate any profit-sharing, bonus or employee stock ownership system?

E. What is the situation in regard to an available supply of labor in case of strikes or expansion?

F. What is Company's labor turnover?

G. What is attitude of different classes of employees toward Company, and what does Company do in the way of compensation insurance, medical service, pension system, etc.?

H. What is accident record and is industry subject to occupational diseases?

XIII. DESCRIPTION OF PROPERTY, INCLUDING SUCH ITEMS AS—

A. Type, age and condition of all plants. Economics of plant location.

B. Arrangement, with special reference to efficiency of operation, flexibility and possibility of expansion. Railroad, highways and water transportation facilities?

C. Power equipment, including arrangements for reserve power in case of break-down.

D. Storage facilities, with special reference to their adequacy to accommodate probable maximum inventories.

E. Fire protection, including sprinkler system, water supply, inspection service, insurance, etc.

F. What is the capacity of the plants: (a) maximum, (b) minimum to run without loss, and (c) most efficient?

G. What, if any, is the "neck of the bottle"?

H. What is the possibility of using any of the buildings and machinery in other lines of business, with special reference to their probable value in case of forced sale?

I. To what extent would the machinery be saleable in case of forced sale?

Form of Balance Sheet

ASSETS	
Current Assets:	
Cash on hand and in banks-----	\$ 000,000
Marketable securities-----	000,000
Notes Receivable (gross and less reserve) ¹ -----	000,000
Accounts Receivable (gross and less reserve)-----	000,000
	<hr/>
	\$0,000,000
Inventories-----	0,000,000
	<hr/>
Total Current Assets-----	\$0,000,000
Plant and Property Account:	
Land-----	\$ 000,000
Buildings-----	000,000
Machinery-----	000,000
Furniture and Fixtures-----	000,000
	<hr/>
	\$0,000,000
Less Depreciation, depletion, obsolescence, etc.-----	000,000
Net Plant and Property Account-----	0,000,000
Investments in Associated Companies-----	000,000
Due from Associated Companies-----	000,000
Deferred Charges-----	000,000
Goodwill, Patents, etc-----	000,000
	<hr/>
	\$0,000,000

LIABILITIES	
Current Liabilities:	
Notes Payable ¹ -----	\$ 000,000
Accounts Payable-----	000,000
Accrued Liabilities-----	000,000
Federal Taxes-----	000,000
Other Current Liabilities-----	000,000
	<hr/>
Total Current Liabilities-----	\$0,000,000
Funded Debt (detailed)-----	0,000,000
Reserves (detailed)-----	0,000,000
Capital Stock	
Preferred-----	\$0,000,000
Common-----	0,000,000
	<hr/>
Total Stock-----	0,000,000
Surplus:	
(Capital)-----	\$ 000,000
(Earned)-----	000,000
	<hr/>
	\$0,000,000

¹ Trade acceptances, if any, to be shown separately, and acceptances discounted shown on both sides of balance sheet.

NOTE.—Any important item which is not sufficiently described by one of the headings given should be listed separately. Contingent liabilities should be shown at bottom of balance sheet.

Form of Earnings Statement

Gross Sales-----	\$00,000,000
Returns, Allowances, etc-----	00,000
	<hr/>
Net Sales-----	\$00,000,000
Cost of Goods Sold, excluding Depreciation-----	\$0,000,000
Depreciation-----	000,000
	<hr/>
Total Cost of Goods Sold-----	0,000,000
	<hr/>
Gross Manufacturing (or Trading) Profit-----	\$0,000,000

Selling Expenses.....	\$000,000	
Administrative and General Expenses.....	000,000	
Total Selling, Administrative and General Expenses.....		\$ 000,000
Net Profit from Operations.....		\$000,000
Other Income.....		000,000
Total Net Income before Interest.....		\$000,000
Interest on Funded Debt.....	\$000,000	
Interest on Floating Debt.....	000,000	
Total Interest Charges.....		000,000
Net Income before Federal Taxes.....		\$000,000
Federal Taxes.....		000,000
Balance before Dividends.....		\$000,000
Dividends on Preferred Stock.....		000,000
Balance before Common Dividends.....		\$000,000
Dividends on Common Stock.....		000,000
Balance to Surplus.....		\$000,000

NOTE.—Show all extraordinary items (such as unusual write-down of inventory or losses on foreign exchange) separately in their appropriate places. In case of a Company with wasting assets (such as copper, oil, coal, etc.) show Depletion as a separate item.

EXHIBIT No. 1887-4

[Submitted by Smith, Barney & Co.]

BUYING DEPARTMENT WORK SHEET FORM FOR USE IN CONNECTION WITH ISSUES
HEADED BY OTHER HOUSES IN WHICH WE HAVE A POSITION AS AN UNDER-
WRITER

Issue..... Handled by.....

NOTICE TO SALES DEPARTMENT

—Notice to H. W. Wilson of our probable inclusion in business

INFORMATION RE UNDERWRITERS

—Questionnaire concerning information about underwriters to be included in
Registration Statement submitted to each partner and Mr. Coulson and
collated information furnished to issuer and/or bankers leading business.

STANDING OF EXPERTS

—Standing of certifying accountants checked
—Standing of bankers' counsel checked
—Standing of engineers checked (if any used)

INVESTIGATION

—Extent of investigation by bankers leading business ascertained.
—Extent of investigation by bankers' counsel ascertained
—Extent of investigation by engineers (if used) ascertained
—Decision reached re extent of our investigation
—Investigation completed
—Decision reached re soundness of issue
—Meeting of underwriters with company officials, counsel, experts, etc. at-
tended by.....

MORTGAGE OR INDENTURE OR CHARTER

- Document and supplements (or summary thereof) read
- Head of group notified of any desired changes
- Head of group notified prior to execution of document and/or supplements whether we are satisfied or dissatisfied therewith

REGISTRATION STATEMENT (INCLUDING FINANCIAL EXHIBITS)

- Preliminary draft read
- Head of group notified of any desired changes
- Company released to put our name in statement
- Statement and financial exhibits as filed read and checked against our files and S. E. C. instructions
- Head of group notified of any desired changes
- Interim amended statements and financial exhibits read and checked against our files and S. E. C. instructions
- Head of group notified of any desired changes
- Final amended statement and financial exhibits read and checked against our files and S. E. C. instructions
- Head of group notified prior to filing of final amended statement and financial exhibits whether we are satisfied or dissatisfied therewith

PROSPECTUS

- Prospectus as filed read
- Extent to which bankers' counsel have checked prospectus against registration statement for omissions and differences ascertained
- Remaining parts of prospectus checked against registration statement for omissions and differences
- Information in prospectus not contained in registration statement checked against our files
- Head of group notified of any desired changes
- Interim amended prospectus read, checked against amended registration statement (to extent necessary in addition to checking thereof by bankers' counsel) and checked against our files (to the extent information in such amended prospectus is not contained in amended registration statement)
- Head of group notified of any desired changes
- Final amended prospectus similarly read and checked
- Head of group notified prior to filing of final amended prospectus whether we are satisfied or dissatisfied therewith

CONTRACTS & SELLING GROUP LETTER

- Draft underwriting group contract read and discussed with a partner
- Draft contract with Company read and discussed with a partner
- Draft of Selling Group Letter read and discussed with syndicate department and a partner
- Head of group notified of any desired changes
- Contracts executed by a partner
- Notice of commitment sent to Messrs. Fish, Coulson and Tichenor and to Miss Wells

BLUE SKY AND ADVERTISEMENT

- Man handling these matters advised upon filing of registration
- Draft advertisement and prospectus delivered to him
- Clearance obtained by him from Stock Exchange
- Advice given by him to Sales Dept. re Blue Sky
- Instructions given by him to head of group re where to use EBS & Co. and where EBS & Co. Inc. in advertisement
- Request made by him to head of group that wording in advertisement should not designate EBS & Co. Inc. as underwriter

EXPENSES

- Company or head of group notified of any of our expenses to be paid by Company or underwriting group

RECORDS

- Copies of each filed registration statement obtained
- Copies of each filed set of financial exhibits obtained
- Copies of other important exhibits obtained
- Copies of each filed prospectus obtained
- One copy of each of foregoing obtained in signed or certified form
- Copies of each filed "reconciliation and tie" obtained
- "Red herring" prospectus and selling syndicate letter—and accompanying manager's letter—obtained
- Final selling syndicate letter obtained
- Duplicate contracts made or obtained (with signatures printed in)
- Legal opinions obtained
- Engineers' report (if any) obtained
- Advertisement clipped from paper
- Buying Dept. correspondence collected in one file or group of files
- Memo made re extent of checking done by us
- Signed contracts, important checking material and memo re extent of checking by us placed in safe-keeping
- Balance of foregoing material sent to Buying Department Files
- Pink sheet written (if necessary in addition to pink sheet written by Tichenor)

JANUARY 1, 1937.

EXHIBIT No. 1888

[From the files of Smith, Barney & Co. Specimen of dealer performance record card¹]

XYZ Corp.

EDWARD B. SMITH AND CO.

Information and special remarks concerning subject	15-50	Business received				
		Year	Retail sales	Approximate profit	Commission business	Other business
8/31/34 All types general securities. Ample capital. Large sales organization. (H.W.) No Stocks.***10/23/36 Understand now Interested in Pfd. & Com. Stks.***		1936	\$56,500 3190 sh.	Credit \$88.47	\$339.76	
		1937	91 M 544 sh.	\$108.42	\$108.	

Remarks concerning business received:

10/1/36—Have given us business quite regularly.

1936—We have given them 2188 sh. Comm. \$619.00

1937—We gave them 255 sh.-comm. \$58.25.

Offering date	Total issue	Participation Issue	Subscription	Total sales	Repurchases profits	Selling commissions	Total
12/11/34	6100 M....	Chic & Western Ind. A. 5½ 1962.		10 M....			
12/14/34	1658 M....	Chic & Western Ind. C 5½ 1962.	10 M....	10 M....			
12/21/34	18000 M....	Ches Corp 5 1944.		15 M....		248	248
3/28/35	45000 M....	Pac Gas & Elec 4 1964.		15 M....			
4/22/35	73000 M....	Southern Calif Ed. 3¾ 1960.		10 M....			
5/3/35	12000 M....	Atlantic Coast Line RR. 5 1945.		15 M....			
6/6/35	29500 M....	Comm Edison Co. 3¾ 1965.		20 M....		300	300
6/7/35	25000 M....	American Rolling Mill 4¾ 1945.		20 M....			
7/1/35	35000 M....	Southern Calif Ed. 3¾ 1960.		10 M....			
7/17/35	32000 M....	Pure Oil 4¼ 1950.		20+15	2M-Pen...	454	454
6/26/35	30000 M....	Pacific Gas & Elec 4 196.		10 M....			
7/18/35	70000 M....	Duquesne Lt. 3½ 1965.		20 M....			
7/23/35	16000 M....	Public Svc. N. J. 4¼ 1960.		10 M....		150	150
7/30/35	20000 M....	Wilson & Co. Inc. 4 1955.		25 M....		343.75	343.75
7/2/35	55000 M....	Beth. Steel 4¼ 1960.		25 M....		343.75	343.75
9/25/35	49000 M....	Detroit Edison 4 1965.		10 M....			
9/25/35	20000 M....	Pacific Gas & Elec. 4 1964.		10+10 M....			

¹ Specimens of dealer performance record cards used by other firms appear as "Exhibit No. 1639-23," Hearings Part 22, p 11744, and "Exhibits Nos. 2043-2047-2," infra, pp 12967-12978.

EXHIBIT No. 1889-1

[Letter from Smith, Barney & Co., to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

SMITH, BARNEY & CO.,

14 Wall Street, New York, September 1, 1939.

Mr. W. S. WHITEHEAD,

Securities and Exchange Commission,

120 Broadway, New York, N. Y.

DEAR SIR: In our conversation in Mr. Swan's office on Wednesday, August 30, you asked certain questions pertaining to the mechanics and methods commonly used by underwriters in financing the purchase of securities from issuing corporations and arrangements for intermediate financing in the event an issue is unsuccessful and unsold bonds remain in the hands of the underwriter after date of offering and through date of closing the deal with the issuing corporation.

You are no doubt aware that each underwriter is severally responsible to the issuing corporation for the amount he contracts to underwrite. Each underwriter must therefore arrange to have a certified or bank cashier's check payable in New York Clearing House funds to the order of the issuing corporation in the hands of the Manager at an early hour, to facilitate closing the deal, on the day payment is to be made to the issuing corporation. The Manager, acting for himself and the other underwriters severally, delivers the underwriters' checks, at the place scheduled for the closing, to the issuing corporation, and proceeds with the mechanics incidental to closing of the deal and the acceptance of the securities.

You have asked specifically how the following issues were paid for and what arrangements were made for the carry of unsold securities after closing date:

<i>Issued:</i>	<i>Closed</i>
Pure Oil Co. 5% Cumulative Convertible Preferred Stock... 3 1/8s, 1952	October 22, 1937
Bethlehem Steel Corp. 15-Year Sinking Fund Convertible	October 11, 1937
Shell Union Oil Corp. 15-Year 2 1/2% Debentures, 1954	July 24, 1939
Pennsylvania Power & Light Co. First Mortgage Bonds, 3 1/2%, 1969 4 1/2% Debentures, 1974	August 11, 1939

The mechanics incidental to payment to an issuing corporation on closing date for the amount of securities underwritten briefly are as follows: Bank balances are maintained in at least a certain minimum amount which experience shows will take care of normal day-to-day requirements. When funds build up to a level beyond this point—loans are reduced; when it is apparent that the bank balance would fall below this minimum amount—loans are increased. However, this rule is not applied the day before a large commitment must be paid for. On that day funds are ordinarily concentrated in the bank on which the check will be drawn to the issuing corporation. In addition, a Day Loan is ordinarily made.

A Day Loan is a temporary extension of credit granted by a bank for a period of a business day to facilitate the clearing of securities. There is attached hereto a form of Day Loan Agreement. The loan must be paid off in full at the end of the day. For this accommodation, interest at the rate of 1% is charged by the bank. This rate has been in effect for some years past.

An examination of the attached schedules shows how the purchase of each of the above securities was financed on the closing day, that is, the amount of the Day Loan and the amount of bank balance used in the payment to the issuing corporation.

On a successful syndication such as the Pennsylvania Power & Light securities, the underwriter on the closing date is reimbursed the amount paid the issuing corporation as a result of his retail sales and sales to the Selling Group. Thus, the underwriter is put in funds in excess of the amount required to pay off his Day Loan at the bank at the close of business.

It has been the policy of this firm to obtain Day Loan accommodations from The Guaranty Trust Company, Bankers Trust Company, Chase National Bank and Central Hanover. The selection is usually based on service and facilitation. For example, if the deal is to be closed at the Guaranty Trust Company, Trust Department, that bank is used; if at the Bankers, that bank, etc.

On slow moving deals the unsold balance is usually financed entirely from funds at the disposal of the firm in the form of bank balances or the creation of

bank balances through the medium of borrowing on other securities available for that purpose as was the case in the Shell Union deal. At no time while we had unsold Shell Union bonds on our hands were they used for borrowing purposes.

As shown by the attached schedules, however, collateral loans were made by Edward B. Smith & Co. in the case of the Pure Oil Preferred Stock and Bethlehem Steel Bonds. All of the Pure Oil Preferred Stock, namely 58,936 shares, was hypothecated at The Guaranty Trust Company on the closing day, October 22, at a loan value of 64 per share. The difference between 64 and 100, the price paid for the stock, was financed by the firm. Details of that loan from the date it was made until paid off through sale of a balance of 57,723 shares of stock to the Ebsco Corporation on December 23, 1937, is attached.

In the case of the Bethlehem Steel Bonds, \$5,913,500 par value remained unsold on the closing day, October 11. These bonds were hypothecated at The Guaranty Trust Company on that day at a loan value of 80. The difference between 80 and 100, the price paid for the bonds, was financed by the firm. Details of that loan from the date it was made until paid off through sale of a balance of \$2,074,300 principal amount to the Ebsco Corporation on December 23, 1937 is attached. Both of these loans were made under a Collateral Loan Agreement, a specimen copy of which is attached.

The Ebsco Corporation was a corporation formed in connection with the liquidation of Edward B. Smith & Co.

It has been the policy of the firm to use the following banks for collateral loan accommodations:

Bank of Manhattan Company
Bank of New York & Trust Company
Bankers Trust Company
Brooklyn Trust Company
Central Hanover Bank & Trust Co.
Chase National Bank
Chemical Bank & Trust Co.
Fidelity Union Trust Co. of Newark, N. J.
Fifth Avenue Bank
First National Bank
Guaranty Trust Company
Irving Trust Company
Marine Midland Trust Co.
National City Bank
National Shawmut Bank, Boston
New York Trust Co.
U. S. Trust Co.

Very truly yours,

Per Pro SMITH, BARNEY & CO.
By W. H. COULSON.

WHC:GA
Encls.

EXHIBIT No. 1889-2

CLOSING DATE--FRIDAY, OCTOBER 22, 1937

434,394 SHARES THE PURE OIL COMPANY 5% CUMULATIVE PREFERRED STOCK

Underwriting 58,936 shares @ 100=\$5,893,600 paid to The Pure Oil Company

Amount financed by Day Loan at Guaranty Trust Company 10/22__	\$4,500,000
From Bank Balance of \$2,282,656.57 close of 10/21 at Guaranty-----	1,393,600

Total Payment-----	\$5,893,600
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Day Loan was paid off before close of business October 22 and collateral loan made with Guaranty Trust Company.

Cost of 58,936 shares @ 100-----	\$5,893,600
Loan--58,936 @ \$64. per share--proceeds-----	3,771,904

Balance financed by Firm-----	\$2,121,696
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[Loan Schedule Attached]

Loan of Edward B. Smith & Co.

1. ACTIVITY OF LOAN

Date	Debit	Credit	Balance	Rate	Interest Paid
10-22-37.....	\$3,771,904	0	\$3,771,904	3½	0
10-30-37.....	0	0	3,771,904	3½	\$3,300.39
11-30-37.....	0	0	3,771,904	3½	11,001.39
12-6-37.....	0	\$2,904	3,769,000	3½	0
12-7-37.....	0	22,000	3,747,000	3½	0
12-8-37.....	0	19,000	3,728,000	3½	0
12-8-37.....	0	28,000	3,700,000	3½	0
12-9-37.....	0	1,000	3,699,000	3½	0
12-9-37.....	0	5,000	3,694,000	3½	0
12-23-37.....	0	3,694,000	0	3½	8,318.66
					\$22,620.44

2. ACTIVITY OF COLLATERAL

Date	Deposited	Issue	Withdrawn
10-22-37.....	53,936 shs.....	Pure Oil Co. 5% Cum. Conv. Pfd.....	0
12-6-37.....		do do.....	36 shs
12-7-37.....		do do.....	350 "
12-8-37.....		do do.....	50 "
12-8-37.....		do do.....	300 "
12-8-37.....		do do.....	400 "
12-9-37.....		do do.....	5 "
12-9-37.....		do do.....	19 "
12-9-37.....		do do.....	53 "
12-23-37.....		do do.....	57,723 "

EXHIBIT No. 1889-3

\$48,000,000 BETHLEHEM STEEL CORPORATION 15-YEAR SINKING FUND CONVERTIBLE
3½% DEBENTURES DUE OCTOBER 1, 1952

CLOSING DATE—MONDAY, OCTOBER 11, 1937

*Underwriting \$7,190,300 par value @ 100 and accrued interest from October 1 to
October 11*

Principal \$7,190,300.00
Accrued Int..... 6,990.57

Total paid Beth. Steel Corp..... \$7,197,290.57
Amount financed by Day Loan at Guaranty Trust Company 10/11... \$6,000,000.00
From Bank Balance of \$1,287,973.91 close of 10/10 at Guaranty--- 1,197,290.57

Total Payment..... \$7,197,290.57
Par Value of Underwriting..... \$7,190,300
Give-up to Selling Group..... 563,600

Balance for Retail Sales..... \$6,626,700
Sold up to Oct. 11..... 713,200

Unsold Balance financed by loan..... \$5,913,500

Day Loan was paid off before close of business October 11
and collateral loan made with Guaranty Trust Company.

Cost of \$5,913,500 par value @ 100..... \$5,913,500.00
Loan @ 80—proceeds..... 4,730,800.00

Balance financed by Firm..... \$1,182,700.00

[Loan Schedule Attached]

*Loan of Edward B. Smith & Co.**1. Activity of loans*

Date	Debit	Credit	Balance	Rate	Interest Paid
10-11-37.....	\$4,730,800	0	\$4,730,800	3	0
10-18-37.....		\$484,075	4,246,725	3	0
10-19-37.....		232,000	4,014,725	3	0
10-19-37.....		1,020,000	2,994,725	3	0
10-25-37.....		195,725	2,799,000	3	0
10-26-37.....		44,000	2,755,000	3	0
10-27-37.....		35,000	2,720,000	3	0
10-29-37.....		40,000	2,680,000	3	0
10-30-37.....		0	2,680,000	3	\$5,973.72
11-1-37.....		105,000	2,575,000	3	0
11-8-37.....		70,000	2,505,000	3	0
11-9-37.....		125,000	2,380,000	3	0
11-10-37.....		90,000	2,290,000	3	0
11-12-37.....		10,000	2,280,000	3	0
11-15-37.....		75,000	2,205,000	3	0
11-16-37.....		50,000	2,155,000	3	0
11-18-37.....		50,000	2,105,000	3	0
11-19-37.....		25,000	2,080,000	3	0
11-22-37.....		100,000	1,980,000	3	0
11-23-37.....		30,000	1,950,000	3	0
11-24-37.....		25,000	1,925,000	3	0
11-29-37.....		0	1,925,000	2 1/2	0
11-30-37.....		290,000	1,635,000	2 1/2	5,585.77
12-23-37.....		1,635,000	0	2 1/2	0
12-24-37.....		0	0	2 1/2	2,611.46
					\$14,170.95

2. Activity of collateral

Date	Deposited	Issue	Withdrawn
10-11-37.....	\$5,913,500	Bethlehem Steel Corp. Conv. 3 1/2/52.....	0
10-11-37.....	4,000	do	\$4,000
10-13-37.....	1,000	do	1,000
10-15-37.....	3,000	do	3,000
10-18-37.....	0	do	569,500
10-19-37.....	0	do	1,200,000
10-19-37.....	0	do	200,000
10-21-37.....	12,000	do	12,000
10-22-37.....	0	do	200,000
10-25-37.....	0	do	200,000
10-26-37.....	0	do	100,000
10-27-37.....	1,000	do	1,000
10-27-37.....	0	do	40,000
10-28-37.....	0	do	54,000
11-1-37.....	0	do	130,000
11-4-37.....	1,000	do	1,000
11-8-37.....	0	do	46,500
11-9-37.....	0	do	162,000
11-10-37.....	0	do	110,900
11-12-37.....	0	do	10,000
11-15-37.....	0	do	133,500
11-16-37.....	0	do	30,000
11-18-37.....	0	do	62,000
11-19-37.....	0	do	31,000
11-22-37.....	0	do	97,000
11-29-37.....	0	do	100,000
11-30-37.....	0	do	363,700
11-30-37.....	1,000	do	1,000
12-2-37.....	6,000	do	6,000
12-17-37.....	1,000	do	1,000
12-23-37.....	0	do	2,074.300

EXHIBIT No. 1889-4

\$85,000,000 SHELL UNION OIL CORPORATION 15 YEAR 2½% DEBENTURES DUE
JULY 1, 1954

CLOSING DATE—MONDAY, JULY 24, 1939

Underwriting \$4,000,000 par value @ 96¼ plus interest

\$4,000,000 par value @ 96¼ -----	\$3, 850, 000. 00	
Accrued Interest -----	6, 388. 88	
Total paid Shell Union Oil Corp.-----	\$3, 856, 388. 88	
Amount financed by Day Loan at Guaranty Trust Company 7/24--	\$3, 300, 000. 00	
From Bank Balance of \$851,234.74 close of 7/21 at Guaranty-----	556, 388. 88	
Total Payment -----	\$3, 856, 388. 88	
Underwriting -----	\$4, 000, 000	
Give-up to Selling Group-----	750, 000	
Balance for Retail Sales-----	\$3, 250, 000	
Additional bonds unsold to dealers taken down-----	274, 000	
Total for Retail Sales-----	\$3, 524, 000	
Sold @ Retail price 97¾-----	1, 624, 000	
Unsold Balance 7/28-----	\$1, 900, 000	
Balance of \$1,900,000 sold on July 28. None of these bonds were pledged for a collateral loan.		

EXHIBIT No. 1889-5

PENNSYLVANIA POWER & LIGHT COMPANY \$95,000,000 FIRST MORTGAGE BONDS 3½%
DUE AUGUST 1, 1939—\$28,500,000 4½% DEBENTURES DUE AUGUST 1, 1974

CLOSING DATE—FRIDAY, AUGUST 11, 1939

SB&Co. Underwriting—Bonds \$5,385,000—Debs. \$1,615,000

\$5,385,000 par value Bonds @ 103½-----	\$5, 573, 475. 00	
Accrued Interest-----	5, 235. 43	\$5, 578, 710. 43
\$1,615,000 par value Debs. @ 101½-----	\$1, 639, 225. 00	
Accrued Interest -----	2, 018. 75	1, 641, 243. 75
Total paid Pennsylvania Power & Light Company-----	\$7, 219, 954. 18	
Amount financed by Day Loan at Guaranty Trust Company 8/11--	\$5, 000, 000. 00	
From Bank Balance of \$3,041,383.87 close of 8/10 at Guaranty----	2, 219, 954. 18	
Total Payment -----	\$7, 219, 954. 18	

	Bonds	Debentures
Underwriting -----	\$5, 385, 000	\$1, 615, 000
Give-up to Selling Group -----	385, 000	0
Balance for Retail Sales -----	\$5, 000, 000	\$1, 615, 000

All retail bonds were sold on date of offering.

EXHIBIT No. 1890

TRUST RECEIPT

CHICAGO, ILL.,-----193----

To CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO:

Receipt is hereby acknowledged this day from you of the property described below, which the undersigned hereby agrees to hold in trust for you:

It is hereby agreed that the undersigned is and will be the bailee of said property for you, and upon demand will forthwith return it to you; or, the undersigned will when and as received forthwith turn over to you the total proceeds of said property, which shall be at least the full and true value thereof; or, if you consent, the undersigned may (in lieu of such proceeds) forthwith deliver to you the equivalent for said property of a kind, character and value entirely satisfactory to you, to be held and disposed of by you in the place of said property so received from you.

TRUST RECEIPT

CHICAGO, ILL.,-----193----

To CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO:

Receipt is hereby acknowledged this day from you of the property described below, which the undersigned hereby agrees to hold in trust for you, to be accounted for by-----:

It is hereby agreed that the undersigned is and will be the bailee of said property for you, and upon demand will forthwith return it to you; or, at your request, the undersigned will forthwith turn over to you the total proceeds of said property, which shall at least be the full and true value thereof; or, upon demand, the undersigned will forthwith deliver to you the equivalent for said property of a kind, character and value entirely satisfactory to you to be held and disposed of by you in the place of said property so received from you.

No. -----

P-3

DAY LOAN AGREEMENT

NEW YORK, -----, 193----

\$-----

The undersigned hereby applies to THE NATIONAL CITY BANK OF NEW YORK, (hereinafter called "the Bank") for a loan of-----

Dollars,

to be credited to the account of the undersigned with the Bank, upon the terms and conditions below stated, and to be repaid, at the Bank's Head Office or Branch at which the loan was made, at or before the close of business this day, together with interest at the rate of One Per Cent per annum. The avails of said loan shall be received and used by the undersigned only for one or both of the following purposes: To pay, in whole or in part, the purchase price of, and thus to obtain, certain securities which the undersigned has contracted to purchase and receive; or, to pay, in whole or in part, another loan or other loans heretofore made to the undersigned, and thus to release certain securities held as collateral to such other loan or loans. The undersigned, as Trustee for the Bank, shall obtain possession of the securities aforesaid; and shall deliver, or cause to be delivered the same to the Bank, as security for this loan, before the close of business this day, unless in the meantime the amount of this loan shall have been repaid to the Bank. The undersigned may, however, before the close of business this day, sell or transfer, for cash or its equivalent, or pledge for money contemporaneously borrowed,

or exchange for other securities, any or all of said certain securities, but the proceeds of such sales, transfers and pledges, shall be received by the undersigned as Trustees for the Bank, and shall be delivered by the undersigned to the Bank before the close of business this day where they shall be credited in payment *pro tanto* of said loan, and the securities received in exchange shall be in all respects charged with the same trust, and subject to the same right of the Bank to possession, and otherwise, as herein provided in respect of the certain securities so exchanged. The undersigned further agrees forthwith upon demand of the Bank at any time to execute and deliver to the Bank an instrument in writing designating the securities so held by the undersigned hereunder in trust for the Bank and reciting that a security interest therein remains in or will remain in or has passed to or will pass to the Bank.

It is agreed that the Bank shall have the right at any time, in event of default in payment of the said loan, to sell without advertisement or notice to the undersigned, at any broker's board in the City of New York, or at public or private sale in the said City or elsewhere, or otherwise to dispose of the same in the discretion of any of the officers of the Bank, without notice of amount due or claimed to be due, and without notice of the time or place of sale, each and every of which is hereby expressly waived, any or all of the securities which may come into the possession of the Bank hereunder or pursuant to the provisions hereof, applying the proceeds thereof upon the said indebtedness, together with legal interest and expenses, the undersigned to be liable for any deficiency with legal interest. It is further agreed that, upon the sale by virtue hereof, the Bank may purchase the whole or any part of such property discharged from any right of redemption, which is hereby expressly released to the Bank, which shall have a claim as above defined against the undersigned for any deficiency arising from such sale.

The undersigned, as further security to the Bank, hereby assigns to the Bank, its successor and assigns, all right, title and interest of the undersigned in and to the securities hereinabove referred to, and any and all claims of the undersigned against third parties for the purchase price, or any unpaid balance thereof, of any of said certain securities which have been or may hereafter be sold by the undersigned.

Nothing herein contained is intended to lessen the liability of the undersigned to the Bank arising from the making of said loan; nor to impair the effect of any General Collateral Agreement given by the undersigned to the Bank; nor to confer upon the undersigned any authority to create any liability on the part of the Bank.

NEW YORK, _____ 193_____

\$_____

The undersigned hereby applies to THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK (hereafter called "the Bank") for a loan of_____

Dollars,

to be credited to the account of the undersigned, upon the terms and conditions below stated, and to be repaid at or before the close of business this day. The avails of said loan shall be received and used by the undersigned only for one or both of the following purposes: To pay, in whole or in part, the purchase price of, and thus to obtain, certain securities which the undersigned has contracted to purchase and receive; or, to pay, in whole or in part, another loan or other loans heretofore made to the undersigned, and thus to release certain securities held as collateral to such other loan or loans. The undersigned, as trustee for the Bank, shall obtain possession of the securities aforesaid; and shall deliver, or cause to be delivered the same to the Bank, as security for this loan, before the close of business on this day, unless in the meantime the amount of this loan shall have been repaid to the Bank. The undersigned may, however, before the close of business this day sell or transfer, for cash or its equivalent, or pledge for money contemporaneously loaned, or exchange for other securities, any or all of said certain securities, but the proceeds of such sales, transfers and pledges, shall be received by the undersigned as Trustee for the Bank, and shall be delivered by the undersigned to the Bank before the close of business this day where they shall be credited in payment *pro tanto* of said loan, and the securities received in exchange shall be in all respects charged with the same trust, and subject to the same right of the Bank to possession, and otherwise, as herein provided in respect of the certain securities so exchanged.

The undersigned, as further security to the Bank, hereby assigns to the Bank, its successors and assigns, all of the right, title and interest of the undersigned to and in the securities hereinabove referred to, and to and in any and all claims of the undersigned against third parties now existing and that may be created this day for the purchase price, or any present unpaid balance thereof, of any of said certain securities sold or that may be sold by the undersigned, and to and in all claims of the undersigned against customers of the undersigned for the balance due or to become due this day of the purchase price of any of said certain securities delivered or deliverable to such customers.

Nothing herein contained is intended to lessen the liability of the undersigned to the Bank arising from the making of said loan; nor to impair the effect of any General Collateral Agreement given by the undersigned to the Bank; nor to confer upon the undersigned any authority to create any liability on the part of the Bank.

1276-SL-6-38

Day Note

\$----- New York,-----193-----
The undersigned hereby applies to

MANUFACTURERS TRUST COMPANY, NEW YORK

(hereinafter called "the Trust Company") for a loan of-----
Dollars (\$-----), to be credited to the account of the undersigned, upon the conditions below, and to be repaid by the close of business this day.

The avails of said loan shall be used only for the following purposes:

- (1) To pay, in whole or in part, the purchase price of securities which the undersigned has contracted to purchase and receive; or
- (2) To pay, in whole or in part, other loans heretofore made to the undersigned, and to release to the undersigned securities held as collateral to such loans.

Securities received under either of the foregoing subdivisions shall be kept separately from all other securities and, upon their receipt by the undersigned or the undersigned's agent or representative, shall be held in trust for and deposited with the Trust Company as collateral security for this loan and for any other obligation or indebtedness of the undersigned to the Trust Company.

The undersigned may, however, before the close of business this day, sell or transfer, for cash or its equivalent, or pledge for money contemporaneously loaned, or exchange for other securities, any or all of said securities so pledged, but the proceeds of such sales, transfers, and pledges shall be deemed substituted security hereunder. Before the close of business this day, unless in the meantime the amount of this loan shall have been repaid to the Trust Company, such securities shall be delivered to the Trust Company.

The undersigned, as further security for the said obligation to the Trust Company, hereby assigns to the Trust Company, its successor and assigns, all of the right, title, and interest of the undersigned to and in the securities hereinabove referred to, and to and in any and all claims of the undersigned against third parties now existing and that may be created for the purchase price, or any present unpaid balance thereof, of any of said securities sold or that may be sold by the undersigned, and to and in all claims of the undersigned against customers of the undersigned for the balance due or to become due of the purchase price of any of said securities delivered or deliverable to such customers.

Nothing herein contained is intended to lessen the liability of the undersigned to the Trust Company arising from the making of said loan; nor to impair the effect of any General Collateral Agreement given by the undersigned to the Trust Company; nor to confer upon the undersigned any authority to create any liability on the part of the Trust Company.

By-----

EXHIBIT No. 1891

THE NATIONAL CITY BANK OF NEW YORK,

NEW YORK, N. Y.

Date ----- 193-----

(Address of Head Office or Branch) -----

To induce THE NATIONAL CITY BANK OF NEW YORK (hereinafter called the "Bank"), in its discretion, to make loans or otherwise give, grant or extend credit at any time or from time to time to the undersigned (or any one or more of us), the undersigned agree(s) to pledge and do(es) hereby pledge to the Bank as security for any and all obligations or liabilities of the undersigned (or any one or more of us) to it, now or hereafter existing, any and all property of the undersigned (or any one or more of us), which is now or may at any time hereafter come into the possession or control of the Bank, or of any third party acting in its behalf, whether for the express purpose of being used by the Bank as collateral security or for safekeeping or for any other or different purpose, including such property as may be in transit by mail or carrier for any purpose, or covered or affected by any documents in the Bank's possession, or in possession of any third party acting in its behalf, it being understood that the Bank shall have and is hereby given a lien on any and all such property for the aggregate amount of any and all such obligations or liabilities; and the undersigned hereby authorize(s) the Bank, at its option, at any time(s), whether or not the property held by it as security is deemed by it adequate, to appropriate and apply upon any or all of the said obligations or liabilities, whether then due or not due, any and all moneys now or hereafter in the hands of the Bank, on deposit or otherwise, to the credit of or belonging to the undersigned (or any one or more of us), and should the aggregate market value of the above mentioned collateral so held or controlled by the Bank, or by any third party acting in its behalf, at any time suffer any decline or fail to conform to legal requirements, or if the Bank should at any time deem said collateral insufficient by reason of the decline in the market value of any part thereof, the undersigned hereby agree(s) to make such payments on account of the aforesaid obligations or liabilities or, as additional collateral therefor, to deposit and pledge with the Bank such other property, as may be satisfactory to it.

Upon the non-payment of all or any part of the principal of, or the interest upon, any of the obligations or liabilities above mentioned, or upon the failure of the undersigned forthwith, with or without notice, to furnish satisfactory additional collateral or to make payments on account as hereinbefore agreed, or to perform or to comply with any of the other terms or provisions of this agreement, or in case of the death, failure in business, dissolution or termination of existence of the undersigned (or any of us), or if any petition in bankruptcy be filed by or against the undersigned (or any of us), or if any proceedings in bankruptcy, or under any Acts of Congress relating to the relief of debtors, should be commenced for the relief or readjustment of any indebtedness of the undersigned (or any of us), either through reorganization, composition, extension or otherwise, or if a receiver of any property of the undersigned (or any of us) should be appointed at any time, or if the undersigned (or any of us) should make an assignment for the benefit of creditors or take advantage of any insolvency law, or if any funds or other property of the undersigned (or any of us) which may be or come into the possession or control of the Bank, or of any third party acting for the Bank as aforesaid should be attached or distrained, or should be or become subject to any mandatory order of court or other legal process, then, or at any time after the happening of any such event, any or all of the aforesaid obligations or liabilities of the undersigned (or any one or more of us) to the Bank, then existing, shall, at the option of the Bank, become due and payable forthwith, without demand or notice to the undersigned (or any one or more of us), and likewise upon the happening of any such event, or at any time thereafter, either before or after the maturity of any one or more of the aforesaid obligations or liabilities, the Bank is hereby authorized and empowered in its discretion to appropriate and apply upon all or any of the aforesaid obligations or liabilities, any or all of the property hereby pledged and/or any other property upon which the Bank may then have a lien hereunder, and to sell, assign and deliver the whole, or any part thereof, at any broker's board, or at public or private sale, at the option of the Bank, either

for cash or on credit, or for future delivery, without assumption of any credit risk, and without either demand, advertisement or notice of any kind, all of which are hereby expressly waived. At any such sale, the Bank may itself purchase the whole or any part of the property so sold, free from any right of redemption on the part of the undersigned (or any of us), all such rights being also hereby waived and released. In case of any sale or other disposition of any of the property aforesaid, after deducting all costs or expenses of every kind for care, safekeeping, collection, sale, delivery or otherwise, the Bank may apply the residue of the proceeds of the sale(s), or other disposition thereof, to the payment or reduction, either in whole or in part, of any one or more of the said obligations or liabilities to it, whether or not except for this agreement such liabilities or obligations would then be due, making proper allowance for interest on obligations or liabilities not otherwise then due, and returning the overplus, if any, to the undersigned, (or the one(s) of us whose property may have yielded the overplus); all without prejudice to the rights of the Bank as against the undersigned (or any one or more of us) with respect to any and all amounts which may be or remain unpaid on any of the obligations or liabilities aforesaid at any time or times. No delay on the part of the Bank, or any assignee or transferee of the Bank hereunder, in exercising any rights or options hereunder, shall operate as a waiver of any such rights or options, or prejudice the rights of the Bank, its successors or assigns, as against the undersigned (or any of us):

The undersigned further agree(s) that any and all rights and liens of the Bank hereunder shall continue unimpaired and that the undersigned (and each of us) shall be and remain obligated in accordance with the terms hereof notwithstanding the release or substitution of any of the property held as collateral hereunder, at any time or times, or of any rights or interests therein, or any delay, extension of time, renewal, compromise or other indulgence granted by the Bank in reference to any of the obligations or liabilities hereinbefore referred to, or any promissory note, draft, bill of exchange or other instrument given in connection therewith, the undersigned hereby (severally) waiving all notice of any such delay, extension, release, substitution, renewal, compromise or other indulgence, and hereby consenting to be bound thereby as fully and effectually as if the undersigned (and each of us) had expressly agreed thereto in advance.

The Bank is hereby authorized, at its option and without any obligation to do so, to transfer to or register in the name of its nominee(s) all or any part of any securities or other property hereinbefore referred to, and to do so before or after the maturity of all or any of the obligations or liabilities above mentioned and with or without notice to the undersigned (or any of us).

The Bank may assign or transfer this instrument, or any instrument evidencing all or any of the obligations or liabilities hereinbefore mentioned, and may deliver all or any of the property then held as security therefor, to the transferee(s), who shall thereupon become vested with all the powers and rights in respect thereto given to the Bank herein or in the instrument(s) transferred, and the Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but the Bank shall retain all rights and powers hereby given with respect to any and all instruments, rights or property not so transferred.

The word "property" as used herein includes goods and merchandise, as well as any and all documents relative thereto; also, funds, securities, choses in action and any and all other forms of property, whether real, personal or mixed, and any right, title or interest of the undersigned (or any of us) therein or thereto.

This is a continuing agreement and shall remain in full force and effect and be binding upon the undersigned (and each of us) and the (respective) legal representatives, successors and/or assigns of the undersigned until any and all indebtedness and/or obligations of the undersigned (or any one or more of us) to the Bank, whether now existing or hereafter arising, shall have been fully satisfied and discharged; provided, however, that should the undersigned (or any of us) serve on or deliver to the Bank, at its address above set forth, written notice revoking or terminating this Agreement, such notifying party (or parties) shall be released from all obligations or liabilities incurred relative hereto after receipt by the Bank of such notice, but no such notice shall in any manner affect or impair the rights of the Bank against any such party (or parties) with respect to obligations or liabilities theretofore incurred hereunder, or against any other(s) of the parties hereto, with respect to any obligations

or liabilities hereunder, whether theretofore or thereafter incurred. The undersigned further agree(s) that if this Agreement is terminated or revoked by operation of law as against the undersigned (or any one or more of us), the undersigned will (jointly and severally) indemnify and save the Bank, its successors or assigns, harmless from any loss which may be suffered or incurred by the Bank in making, giving, granting or extending any loans or other credit, or otherwise acting, hereunder prior to receipt by it of such notice in writing of such termination or revocation.

This agreement shall be deemed to be made under and shall be governed by the laws of the State of New York in all respects, including matters of construction, validity and performance.

 SF 1512 REV. SEPT. 1935

In consideration of the sum of one dollar paid to the undersigned by THE NATIONAL CITY BANK OF NEW YORK (receipt whereof is hereby acknowledged) and of the making by said Bank of any loan or the extension by it of any credit referred to in the within agreement to any one or more of the parties thereto, all of which loans and/or credits so extended are to be deemed as being hereby requested by the undersigned, the undersigned hereby (jointly and severally) guarantee(s) to THE NATIONAL CITY BANK OF NEW YORK, its successors and assigns, the punctual payment at maturity of any and all such loans or other indebtedness so made or incurred by any one or more of the parties to said agreement, and hereby assent(s) to all the terms and conditions of the said agreement, and consent(s) that the securities for any such loan or other debt may be exchanged or surrendered from time to time, or the time of payment for all or any part thereof extended, without notice to or further assent from the undersigned, who will remain bound upon this guaranty, notwithstanding any such exchange, surrender or extension. Notice of the acceptance hereof and of the making of any such loans or extension of credit, and promptness in making any demand hereunder or in demanding or enforcing payment of any of the indebtedness hereby guaranteed, are hereby expressly waived.

 EXHIBIT No. 1892

GENERAL LOAN AND COLLATERAL AGREEMENT

In order to obtain loans from and otherwise deal with Bank of the Manhattan Company (whose corporate title is President and Directors of the Manhattan Company) (hereinafter referred to as the "Bank"), whether acting in its own behalf and/or in behalf of others, it is hereby agreed by the undersigned that the Bank shall have the rights hereinafter set forth in addition to those created by the circumstances associated with the incurrence of any "Liabilities" as hereinafter defined and with the "Security" as hereinafter defined.

(1) The term "Liabilities" as herein used shall include any and all loans, advances and credits by the Bank, both in its own behalf and in behalf of others, to the undersigned, any and all indebtedness, notes, bonds, obligations and liabilities of any kind of the undersigned, whether to the Bank and/or to any other or others in whose behalf the Bank shall have acted in creating the same, now or hereafter existing, or heretofore or hereafter acquired from another by the Bank and/or by anyone for whom it has acted or shall act in acquiring the same, whether absolute or contingent, secured or unsecured, due or not due, direct or indirect, arising by operation of law, contractual or tortious, liquidated or unliquidated, at law, in equity, in admiralty or otherwise, and whether heretofore or hereafter incurred or given by the undersigned as security or otherwise. The term "Security" as herein used shall include any deposit account maintained by the undersigned with the Bank or heretofore maintained by the undersigned with the Bank of Manhattan Trust Company (hereinafter called the Trust Company) or any other claim of the undersigned against the Bank or the Trust Company, all money, negotiable instruments, commercial paper, bonds, stocks, credits, choses in action, claims, demands, or any interest in any thereof, and

any other property, rights and interests of the undersigned, or any evidence thereof, which have been delivered to the Trust Company or which have been or at any time shall be delivered to the Bank or any of its agents, associates or correspondents, for any purpose, whether or not accepted for the purpose or purposes for which they are delivered; and all such money, negotiable instruments, commercial paper, bonds, stocks, credits, choses in action, claims, demands, or any interest in any thereof, and any other property, rights and interests, or any evidence thereof as have come into the possession, control or custody of the Trust Company or as have or shall come into the possession, control or custody of the bank or of any of its agents, associates or correspondents, or others acting in its behalf, for account, subject to the order, or otherwise for the benefit or under the control of the undersigned. The Bank shall be deemed to have possession, control or custody of any security actually in transit to or set apart for it or any of its agents, associates, correspondents or others acting in its behalf.

(2) As security for any and all such Liabilities, the undersigned hereby pledge(s) to the Bank all such Security capable of pledge and bargain(s), sell(s), assign(s) and transfer(s) to the Bank, and/or give(s) it a general lien upon, all right, title and interest of the undersigned in and to any thereof incapable of pledge or inadequately pledged, such pledge and/or sale, assignment, transfer and/or lien being made or created for the protection and security of the Bank and/or any other or others (but pro rata if held for the benefit of more than one) for whom it has acted or shall act as agent in connection with the creation of any such liability; and in trust for the benefit, and to the extent of the interest, of any such other or others therein.

(3) The Bank, at its discretion, may, whether or not any of such Liabilities be due, in its name and/or in the name of anyone for whom it has acted as agent in connection with the creation of any such liability, or in the name of the undersigned, demand, sue for, collect and/or receive any money or property at any time due, payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any Security, but shall be under no obligation so to do. If the Security shall consist of or include negotiable instruments and/or other choses in action and/or promises or agreements of any character to pay money, they may be sold in the manner hereinafter provided with respect to the sale of any Security; or the Bank, and/or anyone in whose behalf it has acted or shall act in obtaining such Security, may extend the time of payment of any such obligation, or arrange for its payment in installments, or otherwise modify the terms thereof as to any other party liable thereon, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the undersigned thereon or in connection therewith. The Bank, and/or anyone for whom it has acted or shall act as agent as herein provided, upon default (in payment, furnishing security or otherwise) hereunder or in connection with any such Liabilities (whether such default be that of the undersigned or of any other party obligated thereon in whole or in part), may sell in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at such price or prices as the Bank and/or anyone for whom it has so acted or shall so act as agent, may deem best, and either for cash or on credit, or for future delivery, all or any of the Security, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell or of time or place of sale, and the Bank, and/or anyone in whose behalf it has acted or shall act as hereinbefore provided, may be the purchaser of any or all property, rights and/or interests so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of the undersigned, any such demand, notice or right and equity being hereby expressly waived and released. The undersigned will bear and pay all expenses (including expenses for legal services of every kind) of, or incidental to, the enforcement of any of the provisions hereof or of any liability or Liabilities, or of any actual or attempted sale, or of any exchange, enforcement, collection, compromise or settlement of any Security, and/or of receipt of the proceeds thereof, and will repay to the Bank, and/or to anyone for whom it has acted or shall act as agent as herein provided, any such expense incurred; and such expense shall be deemed an indebtedness within the terms of this agreement. The Bank, and/or anyone for whom it has so acted or shall so act as agent, at any time, at its and/or his and/or their option, may apply all or any of the net cash receipts from or on account of any Security to the payment in whole or in part of any or all of the Liabilities, applying or distributing the same as it and/or he and/or they shall elect, whether or not the item or items

on which such payment is applied be due, making proper rebate of interest or discount in case of payment on any item not due. Notwithstanding that the Bank, whether in its own behalf and/or in behalf of another and/or of others, may continue to hold Security and regardless of the value thereof, the undersigned shall be and remain liable for the payment in full, principal and interest, of any balance of said Liabilities and expenses, at any time unpaid.

(4) If at any time the Security for any of such Liabilities shall be unsatisfactory to the Bank, or any of its officers, and the undersigned shall not on demand furnish such further security or make such payment on account as shall be satisfactory to the Bank, or if any sum payable upon any of said Liabilities be not paid when due, or if the undersigned or any maker, obligor, endorser, guarantor, surety, issuer of, or other person liable upon or for any of said Liabilities, or any maker, obligor, endorser, guarantor, surety, issuer of, or other person liable upon or for any Security, shall die or shall become insolvent (however such insolvency may be evidenced), or to make a general assignment for the benefit of creditors, or, if the undersigned or any copartnership of which he is a member shall suspend the transaction of his or its usual business, or upon the commencement of any proceeding of any nature by or against the undersigned or any copartnership of which he is a member under the Bankruptcy Act or any amendment thereof, or if a receiver shall be appointed of or a warrant of attachment issued against any of the property or assets, or any part thereof, of the undersigned, or of any such copartnership, or of any such maker, obligor, endorser, guarantor, surety, issuer, or any other person, thereupon, or upon the commencement of any proceeding against the undersigned or any copartnership of which he is a member under Article 45 of the New York Civil Practice Act, as amended, unless the Bank and/or anyone in whose behalf it has acted or shall act as hereinbefore provided, shall otherwise elect, any and all of said Liabilities shall become and be due and payable forthwith, without presentation, demand, protest, notice of protest or other notice of dishonor of any kind, all of which are hereby expressly waived.

(5) The Bank may, without any notice to the undersigned, transfer or cause to be transferred all or any part of the Security to its name or to the name of its nominee, and repledge all or any part of the Security separate from any of the Liabilities for which it is pledged by the undersigned.

(6) The Bank, and/or anyone in whose behalf it has acted or shall act as agent in connection with the creation of the same, may assign or otherwise transfer any or all, or any part of any, of said Liabilities, and may transfer and/or deliver to any transferee any or all of the Security for the liability, or part thereof, assigned or transferred; and shall be thereafter fully discharged from all claim and responsibility with respect to any and all Security so transferred and/or delivered and the transferee be vested with all the powers and rights of the transferor and/or transferors hereunder with respect to such Security, but the Bank, and/or anyone in whose behalf it has so acted or shall so act, shall retain all rights and powers hereby given with respect to any Security not so transferred. The Bank may also transfer this agreement and in the event of such transfer, the transferee hereof shall have the same rights and remedies hereunder as if originally named herein in place of the Bank.

(7) No delay on the part of the Bank and/or of anyone in whose behalf it has acted or shall act as herein provided, or of any transferee, in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which the Bank and/or anyone in whose behalf it has acted or shall act as herein provided, or its and/or his and/or their transferees, may or would otherwise have.

(8) Unless otherwise agreed, the loans, advances or credits heretofore or hereafter obtained from or through the Bank by the undersigned shall be repayable at the principal place of business of the Bank in New York City upon demand and shall bear interest at the rate of six per cent. (6%) per annum.

(9) The undersigned, if more than one, shall be jointly and severally liable hereunder and all provisions hereof regarding Liabilities or Security of the undersigned shall apply to any liability or any security of any or all of them. These presents are to be binding upon the heirs, executors, administrators, assigns or successors of the undersigned.

GENERAL LOAN AND COLLATERAL AGREEMENT

In order to obtain loans from and otherwise deal with THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK (hereinafter called the "Bank"), the undersigned hereby agree(s) that the Bank shall have the rights hereinafter set forth in addition to those created by the circumstances associated with the incurrence of any "Liabilities" as hereinafter defined and with the "Security" as hereinafter defined.

The term "Liabilities" as herein used shall include any and all indebtedness, notes, bonds, debentures, obligations and liabilities of any kind of the undersigned to the Bank and also to others to the extent of their participations granted to or interests therein created or acquired for them by the Bank, now or hereafter existing, arising directly between the undersigned and the Bank or acquired outright, conditionally or as collateral security from another by the Bank, whether absolute or contingent, joint or several, or joint and several, secured or unsecured, due or not due, direct or indirect, including, without limiting the generality of the foregoing, liabilities to the Bank of the undersigned as a member of any partnership, syndicate, association or other group, arising by operation of law, contractual or tortious, liquidated or unliquidated, at law, in equity, in admiralty or otherwise, and whether heretofore or hereafter incurred or given by the undersigned as principal, surety, endorser, guarantor or otherwise. The term "Security" as herein used shall include the balance of every deposit account, now or at any time hereafter existing, of the undersigned with the Bank or any other claim of the undersigned against the Bank, all money, negotiable instruments, commercial paper, notes, bonds, stocks, credits, choses in action, claims, demands, or any interest in any thereof, and any other property, rights and interests, of the undersigned, or any evidence thereof, which have been or at any time shall be delivered to or otherwise come into the possession or custody or under the control of the Bank or any of its agents, associates or correspondents, for any purpose, whether or not accepted for the purpose or purposes for which they are delivered or intended. The Bank shall be deemed to have possession, control or custody of any of the Security actually in transit to or set apart for it or any of its agents, associates, correspondents or others acting in its behalf.

As security for any and all the Liabilities, the undersigned hereby pledge(s) to the Bank all such Security capable of pledge and bargain(s), sell(s), assign(s) and transfer(s) to the Bank, and/or give(s) it a general lien upon, and/or right of set-off of, all right, title and interest of the undersigned in and to any thereof incapable of pledge or inadequately pledged, such pledge and/or sale, assignment, transfer and/or lien and/or right of set-off being made or created for the protection and security of the Bank and/or any other or others (but in such proportions as the Bank may determine if held for the benefit of more than one, such determination of the Bank to be conclusive) having participations or interests in the Liabilities as aforesaid, and in trust in the proportions aforesaid for the benefit of such other or others to the extent of the said participations or interests of any other or others therein.

To the extent and in the manner permitted by law, the right is expressly granted to the Bank, at its option, to transfer or cause to be transferred to, or registered in the name of, itself or its nominee or nominees, any and all stocks, bonds, and other securities and property included in the Security, and whether or not so transferred or registered, to receive the income and dividends thereon, including stock dividends and rights to subscribe, and to hold the same as a part of the Security and/or apply it on the principal of and/or interest on any of the Liabilities, at its discretion to exchange all or any of the Security for other property upon the reorganization, recapitalization or other readjustment of any corporation and in connection with any such reorganization, recapitalization or readjustment to deposit all or any of the Security with any committee or depository upon such terms and conditions as it may determine, after such transfer or registration to vote or cause its nominee or nominees to vote all or any of such stocks, bonds and securities, and to exercise or cause its nominee or nominees to exercise all or any powers with respect to any stocks, bonds or other securities or property forming a part of the Security, with the same force and effect as an absolute owner thereof, all without notice and without liability except to account for property actually received by it.

The Bank, at its discretion, may, whether or not any of the Liabilities be due in its name and/or the name of anyone for whom it has acted or shall act as agent in connection with any such liability, or in the name of the undersigned,

demand, sue for, collect and/or receive any money, securities or other property at any time due, payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any Security but shall be under no obligation so to do. If the Security shall consist of or include negotiable instruments and/or other choses in action and/or promises or agreements of any character to pay money, they may be sold in the manner hereinafter provided with respect to the sale of any of the Security; or the Bank may extend the time of payment of any such obligation, arrange for payment of any thereof in installments, or otherwise modify the terms thereof as to any other party liable thereon, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the undersigned thereon or in connection therewith. The Bank upon default (in payment, furnishing security or otherwise) hereunder or in connection with any of the Liabilities (whether such default be that of the undersigned or of any other party obligated thereon or in respect thereto in whole or in part), may sell or cause to be sold in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at such price or prices as the Bank may deem best, and either for cash or on credit, or for future delivery, without assumption of any credit risk, all or any of the Security, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell or of time or place of sale, and the Bank, and/or anyone in whose behalf it has acted or shall act as hereinbefore provided, or anyone else, may be the purchaser of any or all property, rights and/or interests so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of the undersigned, any such demand, notice or right and equity being hereby expressly waived and released. The undersigned will bear and pay all expenses (including expense for legal services of every kind) of, or incidental to, the enforcement of any of the provisions hereof or of any of the Liabilities, or of any actual or attempted sale, or of any exchange, enforcement, collection, compromise or settlement of any of the Security, and/or of receipt of the proceeds thereof, and for the care of the Security, including expense of insurance, and will repay to the Bank, and/or to anyone for whom it has acted or shall act as agent as herein provided, any such expense incurred; and such expense shall be deemed an indebtedness within the terms of this agreement. The Bank, at any time, at its option, may apply or reapply all or any of the net cash receipts from or on account of any of the Security to the payment in whole or in part of, and may for any purpose allocate all or any of the Security to, any or all of the Liabilities, applying or reapplying or distributing or allocating the same as it shall elect, whether or not the item or items on which such payment is applied or to which such allocation of Security is made be due, making proper rebate of interest or discount in case of payment on any item not due, the determination of the Bank in all such matters being conclusive. The Bank, in its discretion, may surrender or release or exchange or otherwise deal with all or any part of the Security, without the consent of or notice to any other or others having a participation or interest therein as aforesaid or any party hereto. Notwithstanding that the Bank, whether in its own behalf and/or in behalf of another and/or of others, may continue to hold Security and regardless of the value thereof, the undersigned shall be and remain liable for the payment in full, principal and interest, of any balance of the Liabilities and expenses, at any time unpaid.

If at any time the Security for all or any of the Liabilities shall be unsatisfactory to the Bank, the undersigned hereby agree(s) that, upon the demand of the Bank at any time or from time to time, the undersigned will furnish such further security or make such payment on account as will be satisfactory to the Bank, and if the undersigned fail(s) so to furnish such security or to make such payment, or if any sum payable upon any of the Liabilities be not paid when due, or if the undersigned or any maker, obligor, endorser, guarantor, surety, issuer of, or other person liable upon or for any of the Liabilities or Security shall die or shall become insolvent (however, such insolvency may be evidenced), or commit any act of insolvency, or make a general assignment for the benefit of creditors, or, if the undersigned or any copartnership of which the undersigned is or may be a member (or if more than one) are or may be members, shall suspend the transaction of his or its usual business, or be expelled from or suspended by the New York Stock Exchange, or any other exchange, or if an application is made under Article 45 of the New York Civil Practice Act by any judgment creditor of the undersigned for an order directing the Bank to pay over money, or if a petition in bankruptcy shall be filed by or against the undersigned, or if a petition shall be filed by or against the

undersigned or any proceeding shall be instituted by or against the undersigned for any relief under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions or extensions, or if any governmental authority or any court at the instance of any governmental authority shall take possession of any substantial part of the property of the undersigned, or shall assume control over the affairs or operations of the undersigned, or if a receiver shall be appointed of, or a writ or order of attachment or garnishment shall be issued or made against any of the property or assets, of the undersigned, or of any such copartnership, or of any such maker, obligor, endorser, guarantor, surety, issuer, or other person liable upon or for any of the Liabilities or Security, thereupon, unless the Bank shall otherwise elect, any and all of the Liabilities shall become and be due and payable forthwith.

The Bank, and/or anyone in whose behalf it has acted or shall act as agent in connection with the creation or acquisition of the same, or to whom it shall have granted a participation or interest therein, may assign or otherwise transfer any or all, or any part of any, of the Liabilities, and the Bank may transfer and/or deliver to any transferee any or all of the Security for the liability, or part thereof, assigned or transferred; and thereafter shall be fully discharged from all claim and responsibility with respect to any and all Security so transferred and/or delivered and the transferee be vested with all the powers and rights of the transferor hereunder with respect to such Security, but the Bank, and/or anyone in whose behalf it has so acted or shall so act, shall retain all rights and powers hereby given with respect to any of the Security not so transferred. The Bank may also transfer this agreement and/or any of its rights and powers hereunder, and in the event of such transfer, the transferee hereof or of such rights and powers shall have the same rights and remedies hereunder as if originally named herein in place of the Bank. No delay on the part of the Bank and/or of any transferee, in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right; nor shall the Bank be liable for exercising or failing to exercise any such power or right. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which the Bank, and/or anyone in whose behalf it has acted or shall act, as herein provided, or its and/or his and/or their transferees, may or would otherwise have. The undersigned hereby waive(s) presentment (except for acceptance when necessary), protest, notice of protest and notice of dishonor of any and all drafts, notes, bills of exchange, checks and other instruments included in the Liabilities or the Security or herein mentioned, whether upon inception, maturity, acceleration of maturity or due date, or at any other time, and any and all other notice and demand whatsoever, whether or not relating to such instruments.

No provision hereof shall be excluded, modified or limited except by a written instrument expressly referring hereto and setting forth the provision so excluded, modified or limited.

Unless otherwise agreed, the loans, advances or credits heretofore or hereafter obtained from or through the Bank by the undersigned shall be repayable at the principal place of business of the Bank in New York City upon demand and shall bear interest at the rate of six per cent. (6%) per annum.

The undersigned, if more than one, shall be jointly and severally liable hereunder and all provisions hereof regarding the Liabilities or Security of the undersigned shall apply to any liability or any security of any or all of them. These presents are to be binding upon the heirs, executors, administrators, assigns or successors of the undersigned; they are to constitute a continuing agreement, applying to all future as well as existing transactions, whether or not of the character contemplated at the date of this agreement, and if all transactions between the Bank and the undersigned shall at any time or times closed, they shall be equally applicable to any new transactions thereafter; they shall so continue in force notwithstanding any change in any partnership party, if any, hereto, whether such change occurs through death, retirement or otherwise; and they are to be construed according to the laws of the State of New York.

New York ----- 19-----

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, in consideration of financial accommodations given, or to be given or continued to the undersigned by the Guaranty Trust Company of New York, including any accommodations given on behalf of any disclosed or undisclosed principal, hereby agree, jointly and severally, with the said Trust Company that whenever the undersigned shall become or remain directly or contingently, indebted to the said Trust Company for money lent, or for money paid for the use or account of the undersigned, or for any overdraft, or upon any endorsement, draft or guarantee, or upon any other claim, or in any other manner whatsoever, the said Trust Company shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise, against the undersigned, or his or their executors, administrators, successors, or assigns, namely:

1. All securities deposited by the undersigned with said Trust Company, as collateral to any such obligations or liabilities of the undersigned to said Trust Company, shall subject thereto also be held by said Trust Company as security for any other obligation or liability, direct or contingent, of the undersigned to said Trust Company, whether then existing or thereafter arising; and said Trust Company shall also have a lien upon any balance of the deposit account of the undersigned with said Trust Company existing from time to time, and upon all property of the undersigned of every description given unto or left with said Trust Company for safe keeping or for any other purpose, or coming into the hands of said Trust Company in any way, or in transit to or from said Trust Company, as security for any obligation or liability of the undersigned to said Trust Company now existing or hereafter contracted.

2. Said Trust Company shall at all times have the right to require from the undersigned that there shall be deposited and pledged with said Trust Company as additional security, securities satisfactory in character and amount to said Trust Company; and upon the failure of the undersigned at all times to keep a margin of securities with said Trust Company for any or all such obligations or liabilities of the undersigned satisfactory to said Trust Company, or to furnish such additional margin when required, or upon non-payment of either interest or principal of any obligation or liability to the Trust Company when due, or upon the insolvency of the undersigned, or the filing of a petition in bankruptcy by or against the undersigned or the filing of a petition for reorganization of the undersigned under the bankruptcy laws, or the making of an assignment for the benefit of creditors by the undersigned, or the application for the appointment, or the appointment of any receiver of or of any of the property of the undersigned, or the issuance of any warrant of attachment against any of the property of the undersigned, then and in any such event all obligations or liabilities of the undersigned to said Trust Company shall, at the option of said Trust Company, become immediately due and payable without notice, notwithstanding any credit or time theretofore allowed to the undersigned on any of the said liabilities, provided, however, that in the event of the adjudication in bankruptcy of, or appointment of a Receiver of, or of any of the property of, or of the expulsion or suspension by the New York Stock Exchange or other Exchange as a member, of any of the undersigned, all said obligations or liabilities shall forthwith become due and payable without demand or notice.

3. Upon failure of the undersigned either to pay the interest or principal of any obligation or liability to said Trust Company when becoming or made due, or to maintain the margin of collateral securities as above provided for, then and in any such event said Trust Company may immediately, without demand of payment, without advertising, and without notice to the undersigned, which hereby are expressly waived, sell any or all of the securities or other property of the undersigned held by it as aforesaid as against any or all of the obligations or liabilities of the undersigned, and in connection therewith may grant options, either at the New York Stock Exchange or at any broker's board or at public or private sale, and apply the proceeds of such sale as far as needed toward the payment of any or all of such obligations or liabilities, whether then due or not, together with interest and expense of sale, the undersigned to remain responsible for any deficiency remaining unpaid after such application. If any such sale be at either the New York Stock Exchange, or at a broker's board or at public auction, said Trust Company may itself be a purchaser at such sale of the whole or any part of the securities or other property sold free from any right or equity of redemption of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid, said Trust Company may also apply toward the payment of said

obligations or liabilities all balances of any deposit account of the undersigned with said Trust Company then existing.

4. If any tangible property shall at any time become subject to the lien created hereby or by any other agreement between the undersigned and the Trust Company, the undersigned agrees at its own expense at all times to keep the same fully insured with responsible companies acceptable to the Trust Company, against loss by fire and any other risk to which said property may be subject. The insurance policies or certificate of acceptable companies will be deposited with the Guaranty Trust Company of New York on demand, said Trust Company being designated in the policies as the Assured in the following form: Guaranty Trust Company of New York for account of whom it may concern. Loss, if any, to be adjusted with _____ and payable to the Guaranty Trust Company of New York for account of whom it may concern. In case of failure on the part of the undersigned to effect such insurance, the Trust Company may itself insure such property for account of the undersigned. The Trust Company may at any time transfer into its own name or that of its nominee securities in registered form held as collateral security. In case during the term of this agreement transactions of the character referred to herein shall be had between said Trust Company and any one or more of the undersigned, the security herein provided for shall be applicable to and the provisions hereof shall govern each of such transactions. The undersigned hereby consents that any and all property deposited with the Trust Company as collateral hereunder may be removed by the Trust Company from the State or Country in which it may be held or deposited to any other State or Country, and may there be dealt with by the Trust Company as hereinabove provided.

It is further agreed that these presents constitute a continuing agreement applying to any and all future as well as to existing transactions between the undersigned and said Trust Company.

Dated, New York, the _____ day of _____ 193_____

EXHIBIT No. 1893

Form 13-4-208

NEW YORK, _____ 19_____

The undersigned hereby applies to the GUARANTY TRUST COMPANY OF NEW YORK (hereinafter called "the Trust Company") for a loan of _____ Dollars (\$_____), to be credited to the account of the undersigned, upon the conditions below, and to be repaid by the close of business this day.

The avails of said loan shall be used only for the following purposes:

(1) To pay, in whole or in part, the purchase price of securities which the undersigned has contracted to purchase and receive; or

(2) To pay, in whole or in part, other loans heretofore made to the undersigned, and to release to the undersigned securities held as collateral to such loans.

The securities received as aforesaid shall be kept separately from all other securities, and upon their receipt by the undersigned, a lien or mortgage shall arise in favor of the Trust Company and an itemized list of said securities may be attached to this instrument and made a part thereof, before the close of business this day, and the undersigned hereby agrees to attach such itemized list in accordance with these terms at the demand of the Trust Company. The undersigned may, however, before the close of business this day, sell or transfer, for cash or its equivalent, or pledge for money contemporaneously loaned, or exchange for other securities, any or all of said securities mortgaged, but the proceeds of such sales, transfers and pledges shall be substituted as security for this loan. Before the close of business this day, unless in the meantime the amount of this loan shall have been repaid to the Trust Company, such securities shall be delivered to the Trust Company.

The undersigned, as further security to the Trust Company, hereby assigns to the Trust Company, its successors and assigns, all of the right, title and interest of the undersigned to and in the securities hereinabove referred to, and to and in any and all claims of the undersigned against third parties now exist-

ing and that may be created this day for the purchase price, or any present unpaid balance thereof, of any of said securities sold or that may be sold by the undersigned, and to and in all claims of the undersigned against customers of the undersigned for the balance due or to become due this day of the purchase price of any of said securities delivered or deliverable to such customers.

Nothing herein contained is intended to lessen the liability of the undersigned to the Trust Company arising from the making of said loan; nor to impair the effect of any General Collateral Agreement given by the undersigned to the Trust Company; nor to confer upon the undersigned any authority to create any liability on the part of the Trust Company.

By-----

EXHIBIT No. 1894

[Letter from Kidder, Peabody & Co. to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

KIDDER, PEABODY & Co.

17 Wall Street, New York. 115 Devonshire Street, Boston. 1416 Chestnut Street, Philadelphia

NEW YORK, August 29, 1939.

SECURITIES AND EXCHANGE COMMISSION,
120 Broadway, New York, N. Y.

(Attention: Mr. Whitehead.)

DEAR SIR: In accordance with your verbal request made yesterday, we are pleased to submit the following information:

: PANHANDLE EASTERN PIPE LINE CO. 4S DUE 1952

Our participation in this issue was \$4,000,000 principal amount of bonds out of the total issue of \$24,000,000 bonds. The offering was originally made on March 30, 1937 and the settlement date was April 8, 1937. On the latter date we obtained a day loan in the amount of \$4,000,000 from the National City Bank of New York.

This was done by completing a Day Loan Agreement form similar to the one enclosed bearing their name and sending it to said Bank, together with a check to the order of the National City Bank of New York for the face amount of the loan, and another check for interest for one day at the rate of 1% per annum which in this case was \$111.11. The afore-mentioned probably arrived at the National City Bank at 9 A. M. on the morning of April eighth at which moment the Bank gave Kidder, Peabody & Co. immediate credit for the total of the loan. In the normal course of business, that is, by the end of that day, we had delivered most of our bonds to the accounts to which they were sold and received checks in payment. These checks are generally deposited in the bank from which the day loan is obtained, thereby building up a balance sufficient to allow the Bank to charge the dealer's account with the check which accompanied the day loan application; and in that way the Bank is reimbursed for such day loan. In this particular case, there were several hundred thousand dollars principal amount of bonds sold which could not be delivered against payment for some days, the purchasers having requested us to delay delivery.

Occasionally an insurance company requests a delay in delivery in order to give its legal department sufficient time to review certain legal phases of the bonds. In this instance we do not appear to have borrowed funds on these bonds over the night of April eighth but on April ninth we did borrow \$300,000 from the National City Bank of New York, using as collateral \$325,000 of said bonds. This loan was repaid by us on April twelfth with interest at the rate of 1% per annum.

2. COMMERCIAL CREDIT CO. 2¾% DUE 1942

Our participation in this issue was \$6,500,000 principal amount of bonds. The offering was initially made on June 16, 1937 and the cash date was June 18, 1937. On the latter date we obtained a day loan in the amount of \$6,500,000 from the Chase National Bank, New York. In this instance the mechanics of the day loan were similar, in general, to those previously described. The interest on the aforesaid day loan amounted to \$180.56. However, in this case we did not sell all of our bonds prior to the date of payment but appear to have had on that date a substantial long position. On June eighteenth we obtained a demand loan from the Chase National Bank of \$1,200,000, using as collateral of \$1,321,000 of these bonds. This loan, which carried interest at 1½%, was repaid and the bonds withdrawn as follows:

Date	Bonds Withdrawn	Reduction in Loan	Date	Bonds Withdrawn	Reduction in Loan
6/21/37	\$195,000	\$200,000	7/2/37	\$56,000	\$45,000
6/22/37	95,000	100,000	7/6/37	10,000	None
6/23/37	131,000	100,000	7/7/37	20,000	20,000
6/24/37	325,000	300,000	7/22/37	75,000	70,000
6/24/37	25,000	25,000	7/23/37	50,000	50,000
6/25/37	65,000	50,000	7/26/37	190,000	160,000
6/28/37	59,000	60,000			
6/29/37	25,000	20,000	Total.....	\$1,321,000	\$1,200,000

3. PURE OIL COMPANY 5% CUMULATIVE CONVERTIBLE PREFERRED STOCK

On October 22, 1937 we purchased 24,547 shares of said stock from the Pure Oil Co. On this day we obtained a loan from the New York Trust Co. of \$1,470,000, using this stock as collateral. This loan which was to run for a period of four months, we retaining the right to effect reduction, remained intact throughout the entire period. A renewal for a like period was obtained on February 23, 1938 at a reduced rate of interest. You will find below a schedule of the various amounts of stock withdrawn, the reductions in the amount of the loan and the various rates of interest applicable to the unpaid balances:

Date	Shares Withdrawn	Reduction in Loan	Date	Shares Withdrawn	Reduction in Loan
3/7/38	47	None	5/5/38	200	11,000
3/22/38	1,500	\$90,000	6/6/38	300	16,500
3/23/38	2,100	126,000	5/9/38	200	11,000
3/25/38	200	12,000	5/10/38	900	49,500
3/29/38	800	48,000	5/12/38	400	22,000
4/1/38	600	36,000	5/13/38	200	11,000
4/4/38	900	54,000	5/16/38	400	22,000
4/6/38	800	48,000	5/17/38	100	5,500
4/7/38	None	88,000	5/18/38	300	16,500
4/8/38	700	38,500	5/20/38	500	27,500
4/11/38	2,700	148,500	5/23/38	1,100	60,500
4/12/38	600	33,000	5/24/38	300	16,500
4/13/38	1,500	27,500	6/10/38	1,500	82,500
4/18/38	900	49,500	10/11/38	500	27,500
4/20/38	600	33,000	10/14/38	700	38,500
4/21/38	900	49,500	10/18/38	500	27,500
4/25/38	200	11,000	10/21/38	700	38,500
4/28/38	500	27,500	10/25/38	700	38,500
5/3/38	100	5,500			
5/4/38	400	22,000	Total.....	24,547	\$1,470,000

¹ Renewed.

As a general rule we obtain our day loans from the National City Bank, Guaranty Trust Co. or Chase National Bank as these are the banks we use most frequently for our other banking requirements. Occasionally we have obtained a day loan from the Bank of the Manhattan Co.

If there is any further information you desire, we shall be pleased to submit it.

Yours very truly,

B: W.

EXHIBIT No. 1895

[Letter from Investment Banking Section, Monopoly Study, Securities and Exchange Commission, to The First Boston Corporation]

SEPTEMBER 1, 1939.

Airmail—Special Delivery.

Mr. NEVIL FORD,

*The First Boston Corporation, 100 Broadway,
New York, New York.*

DEAR MR. FORD: Mr. William Whitehead of the Staff of the Investment Banking Section informs me that you have requested a letter from me setting forth the information which Mr. Whitehead asked for orally. As you are aware, these studies are being undertaken at the direction of the Temporary National Economic Committee, established pursuant to Public Resolution No. 113, 75th Congress. I shall appreciate, therefore, your submitting to us the following information:

1. Whether your firm, during the past five years has obtained a clearing loan to provide payment to the extent of your commitment on any issue in which you were the manager or co-manager.

2. If so, furnish the name of the bank arranging same, the type and amount of the three largest loans negotiated, type of collateral (whether same included securities of the issue involved), the form of contract, the duration thereof, the interest rate and the date and amounts on which same were liquidated, and,

3. The basis for selecting X bank in connection with the loan.

Your cooperation in assisting us with our studies is very much appreciated.

Sincerely yours,

PETER R. NEHEMKIS, Jr.,

Special Counsel, Investment Banking Section, Monopoly Study.

PRNehemkis: vr.

CC: William S. Whitehead.

[Letter from The First Boston Corporation, to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

H. M. ADDINSELL

Chairman Executive Committee

THE FIRST BOSTON CORPORATION,
ONE HUNDRED BROADWAY, NEW YORK,
September 7th, 1939.

PETER R. NEHEMKIS, Jr., Esq.,

Securities & Exchange Commission,

Washington, D. C.

DEAR SIR: In the absence of Mr. Ford who is away from the city on a holiday, your letter of September 1st has been referred to me. I enclose a memorandum prepared by our Treasurer's Department which I think will give you the information you desire.

Yours very truly,

H. M. ADDINSELL.

THE FIRST BOSTON CORPORATION

NEW YORK OFFICE

Memorandum

To: Mr. H. M. ADDINSELL,

Chairman of Executive Committee.

SEPTEMBER 6, 1939.

In connection with our conversation this morning relative to the letter which Mr. Ford received from the S. E. C., examination of my files has revealed that the three largest issues we managed are as follows:

Government of the Dominion of Canada 2½% due 1945 (participation of \$10,000,000)

Southern California Edison 4% Bonds and Debentures (participation of \$19,625,000)

Eastern Gas & Fuel 4% due 1956 (participation of \$9,000,000)

At the present time it is the customary procedure for an underwriter, when making payment for his participation, to present a check to the manager drawn to the order of the debtor corporation. Immediately after the closing there is released to each of the underwriters, by the manager, the total number of bonds to be taken down by such manager for his own retail distribution. Any bonds given up by an underwriter to the selected dealers, or for institutional sales, are retained by the manager against receipt, and before the close of business, on the initial delivery day, the manager reimburses the underwriters for the bonds retained. Usually each underwriter takes out with a bank what is commonly known as a "day loan" in order to pay for his commitment. We try as nearly as possible to take out the day loan with the trustee of the new issue. This is done as a compliment to the trustee for their cooperation in the preliminary examination and packaging of the securities and their assistance in expediting delivery on the initial delivery day. In the event all of the bonds retained by the manager are not sold by the initial delivery day, the manager arranges a loan, using such unsold bonds as collateral, and each underwriter is reimbursed with the proceeds of loans made for its account. Each underwriter then uses such proceeds of loans, plus the proceeds he receives on the delivery of bonds against his retail sales, to liquidate the day loan, or in the event he has failed to sell all bonds allotted him for retail distribution, if his capital did not permit it, he would have to arrange a collateral loan on such unsold bonds.

In connection with item two in the letter received from the S. E. C., I would say that what they are probably referring to is whether or not money borrowed from banks is actually secured when making payment for an underwriting commitment. Obviously the same type of collateral, when paying for a new issue, could not collateralize a day loan, since it does not become in possession of the underwriter until such time as they have been paid for.

Of the above mentioned issues, according to my records, it was only necessary to borrow on the same issue of securities once, and that was in the case of Eastern Gas & Fuel. This was necessary because of the fact that all of the bonds given up by the underwriters for selling syndicate were not disposed of before the initial delivery date.

As to the method of payment for the three issues above mentioned, it was necessary to pay for the securities a little different than securities are paid for at the present time. For example, in the case of the Dominion of Canada issue, it was decided that the underwriters would only pay The First Boston Corporation an amount equivalent to the price of the number of bonds that they would take down for their own retail distribution. The First Boston Corporation would then finance the total number of bonds contributed to selling syndicate, plus special sales. In this issue we had made arrangements with the Chase National Bank to finance us initially with a day loan up to their limit of \$20,000,000. Arrangements were made with the Guaranty Trust Company for the balance of approximately \$19,000,000. In the case of the Eastern Gas & Fuel, it was necessary to make payment in Boston in Boston Federal Reserve funds with a check drawn to the order of The First Boston Corporation. We then paid the Eastern Gas & Fuel Associates our check for \$70,375,000. In the case of Southern California Edison, both bonds and debentures, payment was made by each underwriter with a check drawn on the Federal Reserve Bank, payable to the Guaranty Trust Company, for the account of the California Trust Company of Los Angeles.

As to the form of contract and the duration thereof, the contract is known as a day loan, which means it must be liquidated the same day, and the rate charged by all New York City banks for a day loan is 1%.

If there is any further information you desire before you reply to this letter, please advise me and I will make every effort to obtain it!

E. J. COSTELLO, *Assistant Treasurer.*

EXHIBIT No. 1896

[Letter from Halsey, Stuart & Co. Inc. to Investment Banking Section, Monopoly Study, Securities & Exchange Commission]

HALSEY, STUART & CO. INC.

Chicago, New York, and other principal cities

201 So. La Salle St. Telephone State 3900

CHICAGO, ILL., September 11, 1939.

Mr. W. S. WHITEHEAD,

Securities and Exchange Commission, Washington, D. C.

DEAR SIR: In reply to the various questions which you gave our Mr. Matthiessen over the telephone last Saturday, September 9, we desire to advise you as follows:

1st Question: Type of contact with banks for Day Loans.

Ans.: We do not make Day Loans.

2nd Question: Collateral and type of guarantee of loan.

Ans.: All loans made by us are for our own account and are collaterally secured by miscellaneous collateral available. No guarantees are given.

3rd Question: Duration of loans.

Ans.: Demand.

4th Question: Interest rate.

Ans.: Lowest rates we can obtain, which are now from 1% to 1½%.

5th Question: Mechanics of reducing or cancelling loans. A—Amount of collateral taken down.

Ans.: On pro-rata basis.

B—Reduction of loan.

Ans.: In proportion to our various cash needs, which are varied.

6th Question: Basis for selecting banks.

Ans.: It is generally our practice to rotate our loans with the different banks with whom we carry accounts.

7th Question: Banks' knowledge of loans of other underwriters.

Ans.: We are not advised.

8th Question: What difference between successful and unsuccessful issues?

Ans.: None.

9th Question: Specimen documents covering Day and General Loans.

Ans.: Standard form customary among banks.

Very truly yours,

HALSEY, STUART & CO., INC.

CTM JC.

EXHIBIT No. 1897

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Airplane Manufacturing & Supply Corp.

Underwriter: G. Brashears & Co. (Los Angeles, Cal.)

Major Provisions: Contract dated April 28, 1939.

Paragraph 12. Exclusive right for 10 years to purchase and/or sell or otherwise handle any securities to be sold to the public.

EXHIBIT No. 1898

[Source: Halsey, Stuart Co. New York, N. Y. Abstract of provision in contract granting preferential rights for future financing]

ASSOCIATED GAS & ELECTRIC CO.

(#2 through #6)

Company: South Carolina Electric & Gas Co. (former title Broad River Power Co.), General Gas & Electric Corp.

Underwriters: Halsey, Stuart & Co., Pynchon & Co.

Major Provisions: Contract dated November 7, 1924, supplemented Jan. 22, 1925 and May 1, 1925.

Paragraph 26 (original contract). Right for 10 days from date of offer, to be offered all securities prior to their sale to others.

NOTE: Option cancelled by Halsey Stuart & Co., June 2, 1939.

From Halsey Stuart & Co., New York, N. Y. By R. S. Holmes.

EXHIBIT No. 1899

[Source: Halsey Stuart & Co., New York, N. Y. Abstract of provision in contract granting preferential rights for future financing]

Company: Metropolitan Edison Co.

Underwriter: Halsey Stuart & Co.

Major Provisions: Contract dated Oct. 19, 1919.

Option to purchase any securities which may be issued at any time in the future provided a fair and equitable price could be agreed upon in the usual manner.

Contract dated Nov. 16, 1920 provides an amendment to the effect, or is willing to purchase at a price equal to any other bona fide offer.

NOTE: Option cancelled by Halsey Stuart & Co., June 2, 1939.

From Halsey Stuart & Co., New York, N. Y. By R. S. Holmes.

EXHIBIT No. 1900

[Source: Halsey Stuart & Co., New York, N. Y. Abstract of provisions in contract granting preferential rights for future financing]

Company: Lexington Water Power Co., General Gas & Electric Corp.

Underwriter: Halsey Stuart & Co.

Major Provisions: Contract dated Dec. 14, 1927. Right to purchase obligations of company provided agreement on price could be made within two weeks, if not, company could offer at no lower price to others for 30 days after which company required to reoffer to Halsey Stuart on original terms.

NOTE: Option cancelled by Halsey Stuart & Co., June 2, 1939.

From Halsey Stuart & Co., New York, N. Y. By R. S. Holmes.

EXHIBIT No. 1901

[Source: Halsey Stuart & Co., New York, N. Y. Abstract of provision in contract granting preferential rights for future financing]

Company: Binghamton Light Heat & Power Co.

Underwriter: Halsey Stuart & Co.

Major Provisions: Contract dated Aug. 29, 1917. Privilege of purchasing obligations provided agreement upon fair and equitable price or willingness to pay price equal to any other bona fide offer.

NOTE: Option cancelled by Halsey Stuart & Co., June 2, 1939.

From Halsey Stuart & Co., New York, N. Y. By R. S. Holmes.

EXHIBIT No. 1902

[Source: Halsey Stuart & Co., New York, N. Y. Abstract of provision in contract granting preferential rights for future financing]

Company: General Gas & Electric Co., re New Jersey Power & Light Co. Securities.

Underwriter: Halsey Stuart & Co.

Major Provisions: Contract dated Sept. 30, 1919. To sell to Halsey Stuart any obligations maturing more than 12 months or any preferred stock which may be issued any time in the future subject to agreement dated Feb. 23, 1916, of New Jersey with N. W. Halsey & Co. which had first opportunity on additional bonds and if Halsey's bid shall equal highest of other bids received.

NOTE: Agreements of 1916 and 1919 cancelled by agreements dated June 2, 1939.

From Halsey Stuart & Co., New York, N. Y. By R. S. Holmes.

EXHIBIT No. 1903

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Brown-McLaren Manufacturing Co. and the six directors.

Underwriter: Alison & Co. (Detroit, Mich.).

Major Provisions: Contract dated Feb. 17, 1937.

Paragraph VI. For 5 years first right for 20 days to purchase any securities sold by either company or directors after which securities may be sold but only at same or better price than offered by Alison.

EXHIBIT No. 1904

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Bender Body Co.

Underwriters: Wm. J. Mericka & Co. (Cleveland, Ohio), Carlton M. Higbee Corp. (Detroit, Mich.).

Major Provisions: Contract dated Feb. 20, 1937.

Paragraph 4 (k). First right of negotiation on future securities provided if at end of 30 days no agreement is reached, may sell to others.

EXHIBIT No. 1905

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Cinecolor (Inc.).

Underwriter: G. Brashears & Co. (Los Angeles, Cal.).

Major Provisions: Contract dated July 7, 1937.

Paragraph 9. Exclusive right for 5 years to purchase all securities to be issued to the public providing agreement is reached within 30 days on terms not less favorable than offered by others.

EXHIBIT No. 1906

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Mode O'Day Corp. 3 officers and directors.

Underwriter: Banks Huntley & Co. (Los Angeles, Cal.)

Major Provisions: Contract dated Sept. 13, 1937.

Paragraph 18. For three years after stock closing date not to sell any securities without first giving Banks Huntley the right to purchase on at least as favorable terms within 15 days. Failure to purchase an issue does not cancel option on subsequent issues.

EXHIBIT No. 1907

[Source: Halsey, Stuart Co. New York, N. Y. Abstract of provision in contract granting preferential rights for future financing]

Company: Land & Sea Investment Co. re Wisconsin Public Service Corp. Securities.

Underwriter: Halsey Stuart & Co.

Major Provisions: Contract dated Sept. 15, 1922.

Paragraph 8. Except on securities offered direct to the public, Corporation shall first offer securities to Halsey at fair and equitable price to be agreed upon, or at price equal to any other bona fide offer. Failure to purchase any issue cancels contract as to subsequent issues.

NOTE: (1) Above confirmed in letter dated January 6, 1926 addressed to H. M. Byllesby & Co. and Halsey Stuart & Co. by Wisconsin Public Service Corp. but preferential rights excluded on any securities that may be pledged as collateral

by the company or sold to Northern States Power Co., Standard Gas & Electric Co. or any affiliate of these two companies.

NOTE: (2) Contract voided by Oct. 10, 1930 due to the realignment of Standard Gas properties and entry of new interests.

EXHIBIT No. 1908

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Eight stockholders of Dixie—Home Stores

Underwriters: J. G. White & Co. and nine others.

Major Provisions: Contract dated July 14, 1938.

Article VI. Provided stock is all sold stockholders agree to use their best efforts to cause company to give underwriters preferential rights for future financing for a period of 5 years.

EXHIBIT No. 1909

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Bell Aircraft Corp.

Underwriters: G. M. P. Murphy & Co. and four others.

Major Provisions: Contract dated July 10, 1936. First opportunity for 10 years to purchase securities upon at least as favorable terms as proposed by others.

EXHIBIT No. 1910

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Rands and the stockholders.

Underwriter: Floyd D. Cerf Co.

Major Provisions: Contract dated May 5, 1939. If 35,000 shares of preferred are sold within 180 days after Dec. 31, 1939, Cerf will have right for 5 years to purchase any securities, except those offered to stockholders, officers or employees, on terms not more favorable than can be secured elsewhere with 10 days to accept or reject.

EXHIBIT No. 1911

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Norwich Pharmacal Co. and two stockholders.

Underwriter: F. Eberstadt & Co.

Major Provisions: Contract dated Jan. 17, 1939. First right of negotiation for purchase of any securities for 3 years.

EXHIBIT No. 1912

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Houston Oil Field Material Co.

Underwriters: Robinson Miller & Co. (New York), Minsch Monell & Co. (New York)

Major Provisions: Contract dated April 6, 1937.

Paragraph 20. First call on future financing for 3 years provided terms equal any others and that underwriters act thereon within 30 days.

EXHIBIT No. 1913

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: L. E. Carpenter & Co.

Underwriter: Whittaker Bros. & Co., Inc. (New York).

Major Provisions: Contract dated Sept. 28, 1937.

Paragraph 13. Provided 65,000 shares taken down first right to do any other public financing in the future if, after 30 days underwriter does not accept terms company shall be free of this provision.

EXHIBIT No. 1914

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Reed Drug Company.

Underwriter: Floyd D. Cerf Co.

Major Provisions: Agreement dated July 9, 1937. For 5 years the first refusal to act as selling agent for the sale of any securities.

EXHIBIT No. 1915

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: General Plastics Inc.

Underwriter: Fuller Cruttenden & Co. (Chicago, Ill.).

Major Provisions: Contract dated April 12, 1938.

Paragraph 10. First right of negotiation provided if at end of 30 days no agreement is reached, company will have right to make other arrangements.

EXHIBIT No. 1916

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Continental Motors Corp.

Underwriter: Van Alstyne, Noel & Co.

Major Provisions: Contract dated Oct. 26, 1939.

Article VII E. Option which must be exercised within 10 days of offer to run for 5 years also may purchase any securities on same terms as any other person.

EXHIBIT No. 1917

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Bufler's Inc.

Underwriters: R. S. Dickson & Co. (Charlotte, N. C.); Kirchofer & Arnold (Raleigh, N. C.).

Major Provisions: Contract dated Aug. 23, 1939.

Paragraph 14. Agreed that company for 10 years will give notice of proposed issue and price and be given 30 days to come to agreement; also, will not sell such securities to others unless underwriters shall be given 15 days to agree to purchase at same price and terms.

EXHIBIT No. 1918

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Finch Telecommunications, Inc.

Underwriter: Distributors Group Incorporated (Jersey City).

Major Provisions: Contract dated Aug. 4, 1939.

Section 15. If Company decides to sell securities to or through a syndicate or underwriters, Distributors given first right to purchase on a basis of most favorable bona fide bid received by company.

EXHIBIT No. 1919

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Hayes Body Corp.

Underwriter: A. W. Porter Inc. (New York)

Major Provisions: Contract dated March 23, 1939.

Paragraph 8: Provided 120,000 shares are purchased, for 5 years Underwriter shall have 30 days in which to agree to do future financing. If done by others, this right cancelled.

EXHIBIT No. 1920

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Burd Piston Ring Co. and certain stockholders

Underwriter: Van Alstyne, Noel & Co.

Major Provisions: Contract dated Feb. 4, 1937.

Article 11: For 5 years right to acquire any securities at same price as any other person, except securities issued to acquire property or shares of another corporation. Option expires in event of Van Alstyne going out of business.

EXHIBIT No. 1921

[Source: Registration Statement on file with the S. E. C. Abstract of provision in contract granting preferential rights for future financing]

Company: Brewster Aeronautical Corp. and a stockholder.

Underwriter: Van Alstyne, Noel & Co.

Major Provisions: Contract dated Jan. 19, 1937.

Article 16: For 5 years, an option good in each case for 30 days to acquire securities at same price and terms as any other person.

EXHIBIT No. 1922

[Source: From files of Central Republic Co. Abstract of provision in contract granting preferential rights for future financing]

Company: Commonwealth Power Railway & Light Co. Commonwealth Power Corp.

Underwriters: Federal Securities Corp. (Chicago, Ill.) Bonbright & Co. Hayden Stone & Co.

Major Provisions: Contract dated May 15, 1922.

Section 11: First offer of bonds or notes to Bankers at lowest price company would sell to anyone with 15 days to accept or reject.

Note: (1) Companies now part of Commonwealth & Southern Corp. picture.

Note: (2) Federal Securities Corp. now inactive.

EXHIBIT No. 1923

[Source: From files of Central Republic Co. Abstract of provision in contract granting preferential rights for future financing]

Company: Central Illinois Light Co.

Underwriters: Federal Securities Corp.

Ames Emerich & Co.

Major Provisions: Letter dated Sept. 24, 1921. On future funded financing have prior right to any other banking institution on an equal basis.

Benefits Derived: Feb. 6, 1922 purchased \$2,750,000 first and refunding 5% Bonds due April 1, 1943. Dec. 6, 1924 to purchase for the company at not exceeding 110, \$851,000 of the above bonds.

Note: Federal Securities Corporation now inactive. Ames Emerich & Co. now out of business.

EXHIBIT No. 1924

[Source: From files of Central Republic Co. Abstract of provision in contract granting preferential rights for future financing]

Company: Illinois Electric Power Co. (formed by Commonwealth Power Corp.)
Underwriter: Federal Securities Corp.

Major Provisions: Agreement dated March 1, 1923. Purchase any securities, except issued under customer ownership plan, on at least as favorable terms as are offered by any other purchaser.

EXHIBIT No. 1925

[Source: From files of Central Republic Co. Abstract of provision in contract granting preferential rights for future financing]

Company: Illinois Power Co.
Underwriter: Federal Securities Corp.

Major Provisions: Letter dated Nov. 29, 1921. On any future funded financing have prior right to any other banking institution on an equal basis.

EXHIBIT No. 1926

[From Docket No. 31-420, Securities and Exchange Commission]

AGREEMENT DATED 19TH DAY OF JUNE, 1925, BETWEEN LADENBURG, THALMANN & CO., H. M. BYLLESBY AND COMPANY, STANDARD GAS AND ELECTRIC COMPANY

THIS AGREEMENT, dated the 19th day of June, 1925, between LADENBURG, THALMANN & Co., a co-partnership, in the Borough of Manhattan, City of New York, (hereinafter called Ladenburg), party of the first part, H. M. BYLLESBY and COMPANY, a corporation of the State of Delaware, (hereinafter called Byllesby) party of the second part, and STANDARD GAS and ELECTRIC COMPANY, a corporation of the State of Delaware, (hereinafter called Standard) party of the third part,

WITNESSETH:

All the parties hereto are or are to be interested, as stockholders of two new corporations to be formed pursuant hereto, in the property of Pittsburgh Utilities Corporation, a New York corporation, and have come to the agreements herein contained with respect to the management thereof and with respect to the other matters covered by this agreement.

1. There shall be formed the Standard Power and Light Corporation, under the laws of the State of Delaware under a charter satisfactory to counsel for all parties hereto which shall have only one class of voting stock consisting of thirty thousand (30,000) shares of Class B Common Stock, without par value, of which one-half will be owned by Ladenburg or their nominee and the other half owned by Standard or its nominee, and the charter shall provide that one-half the directors shall at all times be elected by the stock to be initially owned by Ladenburg, or their nominee, and that the other half shall at all times be elected by the stock to be initially owned by Standard, or its nominee.

Standard Power and Light Corporation shall also presently issue one hundred thousand (100,000) shares of Preferred Stock and four hundred and ten thousand (410,000) shares of Class A Common Stock, out of a total authorized issue of five hundred thousand (500,000) shares of Preferred Stock and eight hundred thousand (800,000) shares of Class A Common Stock, all without par value. The one hundred thousand (100,000) shares of Preferred Stock and one hundred and ten thousand (110,000) shares of Class A Common Stock to be presently issued are to be allocated to members of the public, now the holders of one hundred thousand (100,000) shares of Preferred Stock and one hundred thousand (100,000) shares of Common Stock of Standard Power and Light Corporation, a Maryland corporation; and one hundred and fifty thousand (150,000) shares of Class A Common Stock will be owned by Byllesby, or its nominee.

The preferences, rights and privileges of the various classes of stock shall be such as are agreed upon by the counsel for all parties.

Byllesby is to procure the transfer to Standard Power and Light Corporation (Delaware) of eighty thousand one hundred (80,100) shares of Preferred Stock

of Pittsburgh Utilities Corporation, a New York corporation, represented in part by voting trust certificates, for the price of \$2,344,500.¹

Initialed opposite amount: J. J. O'B. B W S. C H O'R Reissue.)

Ladenburg are to procure the transfer to Standard Power and Light Corporation (Delaware) of at least four hundred and sixty thousand (460,000) shares and not more than five hundred and five thousand (505,000) shares of Preferred Stock of said Pittsburgh Utilities Corporation, represented by voting trust certificates in whole or in part. In the acquisition of such shares there shall be paid and delivered to Ladenburg, Thalmann & Co., fifteen dollars (\$15) per share plus \$1,555,500 and one hundred and fifty thousand \$150,000) shares of the Class A Common Stock of Standard Power and Light Corporation (Delaware). It is understood that at least ninety-four thousand four hundred (94,400) shares of Preferred Stock of Pittsburgh Utilities Corporation to be transferred by Ladenburg are now owned or controlled by themselves, and that the remainder of the minimum of four hundred and sixty thousand (460,000) shares are owned by the following named corporations, from whom Ladenburg have received written authority to sell the same, to wit:—

<i>Name</i>	<i>No. of shares</i>
First Security Company-----	94,000
Chase Securities Corporation-----	54,000
Haystone Securities Corporation-----	17,600
Union Trust Company of Pittsburgh-----	200,000

The delivery of the said shares of Preferred Stock of said Pittsburgh Utilities Corporation to Standard Power and Light Corporation (Delaware) and the payment of the consideration therefor are to be made concurrently on or before July 27, 1925.

2. There shall also be formed a corporation under the laws of the State of Delaware under a charter to be approved by counsel for all parties, herein referred to as United Railways Investment Holding Corporation, to which shall be transferred by or on behalf of Byllesby or Standard seventy-one thousand eight hundred (71,800) shares of Preferred Stock and one hundred twenty-three thousand three hundred (123,300) shares of Common Stock of United Railways Investment Company, a New Jersey Corporation, which latter corporation, among other things, owns two hundred and forty thousand (240,000) shares of the Common Stock (being all the Common Stock outstanding) of Pittsburgh Utilities Corporation, which shares of Common Stock are represented by voting trust certificates. Such corporation so to be formed shall have an authorized capitalization of Nine million, nine hundred and ninety-nine thousand Dollars (\$9,999,000) of Preferred Stock, represented by ninety-nine thousand nine hundred and ninety (99,990) shares of a par value of one hundred dollars (\$100.) each, and one thousand dollars (\$1,000) par value of Common Stock, consisting of one thousand (1,000) shares of a par value of One dollar (\$1) each. Seven million dollars (\$7,000,000) in par value of non-voting Preferred Stock shall be issued to Standard or to Byllesby, or their respective nominees, in exchange for the aforesaid shares of Preferred and Common Stock of United Railways Investment Company. Five hundred (500) shares of the Common Stock shall be issued to Byllesby, or its nominee, and five hundred (500) shares of the Common Stock shall be issued to Ladenburg, or their nominee, for a nominal consideration, and the charter shall provide that one-half the directors shall at all times be elected by the stock to be initially owned by Ladenburg, or their nominee, and that the other half shall at all times be elected by the stock to be initially owned by Byllesby, or its nominee. The preferences, privileges and other characteristics of the Preferred Stock and the Common Stock shall be such as are agreed upon by counsel for all parties.

3. It is understood as a simultaneous condition of the purchase from or through Ladenburg of not less than four hundred and sixty thousand (460,000) shares of Preferred Stock of Pittsburgh Utilities Corporation, pursuant to paragraph 1. of this Agreement, that Ladenburg shall procure the resignations of L. F. Loree and M. B. Starring, or, at Ladenburg's option, of B. S. Guinness in lieu of M. B. Starring, as Voting Trustees, and shall appoint J. J. O'Brien (hereby selected by Standard) and another executive of Standard to be selected by Standard in their places as Voting Trustees under the Pittsburgh Utilities Corporation Voting Trust Agreement, dated January 17, 1925. Ladenburg hereby agree that in the event of any vacancy in the office of any Voting Trustee selected by Standard another Voting Trustee shall be appointed

¹Amount handwritten.

by Ladenburg to fill such vacancy who shall be selected by Standard and directly connected as an executive with the organization of Standard. In the event that Ladenburg shall not appoint a Voting Trustee or Voting Trustees selected by Standard under the circumstances set forth in this paragraph, within thirty (30) days after having received a notice from Standard of the person or persons selected by Standard so to be appointed as Voting Trustee or Voting Trustees, then Ladenburg will upon the expiration of such thirty (30) days sell to Byllesby at its request the one hundred and fifty thousand (150,000) shares of Class A Common Stock of Standard Power and Light Corporation (Delaware) to be delivered to Ladenburg or their nominee, pursuant to paragraph 1 of this Agreement, or so many thereof as may not have been sold pursuant to paragraph "C" of this Agreement, for the consideration of one hundred thousand dollars (\$100,000), or one dollar (\$1.) per share, whichever may be less, and Ladenburg will further sell to Byllesby at its request the five hundred (500) shares of Common Stock of United Railways Investment Holding Corporation, to be issued to Ladenburg or their nominee, pursuant to paragraph 2 of this Agreement, for the consideration of five hundred dollars (\$500), and Ladenburg will sell to Standard at its request the fifteen thousand (15,000) shares of Class B Common Stock of Standard Power and Light Corporation (Delaware) to be issued to Ladenburg or their nominee, pursuant to paragraph 1 of this Agreement, for the consideration of fifteen thousand dollars (\$15,000).

4. Ladenburg, Byllesby and Standard hereby each agrees with the other (1) not directly or indirectly to promote, further or participate in any of the following named acts of (I) Pittsburgh Utilities Corporation (II) Philadelphia Company (III) Duquesne Light Company (IV) Pittsburgh Railways Company or (V) any other corporation controlled, directly or indirectly, by said Pittsburgh Utilities Corporation, Philadelphia Company, Duquesne Light Company and/or Pittsburgh Railways Company, whether such control be by ownership of stock in any such other corporation by said Pittsburgh Utilities Corporation, Philadelphia Company, Duquesne Light Company and/or Pittsburgh Railways Company and/or by any corporation controlled by any one or more of them, or by any other manner or method whatsoever, to the extent that any of such acts by such other corporation would make a change in the ownership or control of the electric light, power, artificial and natural gas, and/or street railway systems of Philadelphia Company, or Duquesne Light Company or Pittsburgh Railways Company or of any substantial part of any thereof, and (2) to prevent by all the means in its power the doing of any of said acts, and (3) that if any of said acts nevertheless shall be done not to share in any of the profits thereof, directly or indirectly, unless in any such case the said acts shall have been previously agreed upon between Byllesby and Ladenburg:

(a) the reclassification of any class of stock of the pertinent corporation;
 (b) the alteration of the terms of any class of stock of the pertinent corporation;

(c) the creation of any new class of stock of the pertinent corporation;
 (d) the increase in the authorized amount of any class of stock of the pertinent corporation;

(e) the sale, other disposition, mortgage or pledge by the pertinent corporation of the stock (or voting trust certificates therefor) of any other corporation in which it may hold a controlling voting interest, in any manner which may cause it, except in event of default under the terms of the mortgage or pledge, to lose such controlling voting interest;

(f) the distribution of any shares of stock (or voting trust certificates therefor) of any other corporation in which the pertinent corporation may hold a controlling voting interest, among its stockholders by way of dividend or otherwise;

(g) the liquidation in whole or in part or other winding up of the pertinent corporation;

(h) the vote of any stock in any other corporation in which the pertinent corporation may hold a controlling voting interest to permit a recapitalization of such other corporation in such manner that the pertinent corporation shall lose its controlling voting interest therein;

(i) the sale, mortgage, lease or other disposition of all the property of the pertinent corporation, or of so much thereof as shall work a substantial change in the nature of its business (except for the refunding of the outstanding bonds assumed by Pittsburgh Utilities Corporation, and then only on such terms that the controlling interest of Pittsburgh Utilities Corporation in Philadelphia Com-

panty shall not be jeopardized, except in the event of default under the terms of the mortgage or pledge);

(j) the issue by the pertinent corporation through its directors or otherwise of any authorized but as yet unissued shares of its capital stock, or treasury stock, or securities convertible into shares of its capital stock;

(k) the merger or consolidation of the pertinent corporation into or with any other corporation except the act of Duquesne Light Company, Philadelphia Company and/or Pittsburgh Railways Company in causing consolidations or mergers into each, respectively of its respective subsidiary companies.

Without limiting the generality of the words "promote, further or participate" it is hereby expressly agreed that the vote either as a director of the pertinent corporation or of any other corporation, or as a Voting Trustee, or as the holder of any proxy, of any member, officer or director of Ladenburg or of any firm or corporation controlled by them, or of any Voting Trustee (unless selected by Byllesby or by Standard) whose successor is appointable by Ladenburg under any Voting Trust Agreement, (hereinafter called Ladenburg Officials), and the vote either as a director of the pertinent corporation or of any other corporation, or as a Voting Trustee, or as the holder of any proxy, of any member, officer or director of Byllesby or of Standard (respectively) or of any firm or corporation controlled by Byllesby or Standard (respectively) or of any Voting Trustee selected by Byllesby or Standard, respectively, (hereinafter called Byllesby Officials and Standard Officials respectively) in favor of any such proposition, shall be included within the meaning of the said words.

If at any meeting there shall be voting at least one Ladenburg Official and at least one Byllesby Official or Standard Official, and the votes of all the Ladenburg Officials, Byllesby Officials and Standard Officials who shall be voting at that meeting shall be cast to the same effect, then it shall be conclusively presumed that Ladenburg and Byllesby have reached an agreement to that effect.

None of the covenants of this paragraph 4 shall be deemed to have been violated unless and until one of the acts specified in sub-divisions (a) to (k) shall have been consummated by the pertinent corporation.

5. Ladenburg agree with Byllesby that if Ladenburg shall commit any violation of any of their agreements contained in paragraph 4, then Ladenburg will, within thirty days after such violation, sell to Byllesby at its request the one hundred fifty thousand shares (150,000) of Class A Common Stock of Standard Power and Light Corporation (Delaware), to be delivered to Ladenburg or their nominee, pursuant to paragraph 1 of this agreement, or so many thereof as may not have been sold pursuant to paragraph 6 of this Agreement, for the consideration of One hundred thousand dollars (\$100,000) or one dollar (\$1.) per share, whichever may be less, and Ladenburg will further sell to Byllesby at its request the five hundred shares (500) of Common Stock of United Railways Investment Holding Corporation, to be issued to Ladenburg or their nominee, pursuant to paragraph 2 of this agreement, for the consideration of five hundred dollars (\$500.). Ladenburg agree with Standard that if Ladenburg shall commit any violation of any of their agreements contained in paragraph 4, then Ladenburg will, within thirty days after such violation, sell to Standard at its request the fifteen thousand shares (15,000) of Class B Common Stock of Standard Power and Light Corporation (Delaware), to be issued to Ladenburg or their nominee, pursuant to paragraph 1 of this Agreement for the consideration of fifteen thousand dollars (\$15,000).

Byllesby and Standard jointly and severally agree with Ladenburg that if either Standard or Byllesby shall commit any violation of any of its respective agreements contained in paragraph 4, then Byllesby will, within thirty days after such violation, sell to Ladenburg at their request the one hundred fifty thousand shares (150,000) of Class A Common Stock of Standard Power and Light Corporation (Delaware), to be issued to Byllesby or its nominee, pursuant to paragraph 1 of this Agreement, or so many thereof as may not have been sold pursuant to paragraph 6 of this Agreement, for the consideration of one hundred thousand dollars (\$100,000), or one dollar (\$1.) per share, whichever may be less, and Byllesby will further sell to Ladenburg at their request the five hundred shares (500) of Common Stock of United Railways Investment Holding Corporation, to be issued to Byllesby or its nominee, pursuant to paragraph 2 of this Agreement, for the consideration of five hundred dollars (\$500.), and Standard will sell to Ladenburg at their request the fifteen thousand shares (15,000) of Class B Common Stock of Standard Power and Light Corporation (Delaware), to be issued to Standard or its nominee, pursuant to paragraph 1 of this Agreement, for the consideration of fifteen thousand dollars (\$15,000).

6. Ladenburg and Byllesby agree that none of the one hundred fifty thousand (150,000) shares of Class A Common Stock of Standard Power and Light Corporation, (Delaware), to be issued to Byllesby or its nominee, pursuant to paragraph 1 of this Agreement, and none of the one hundred fifty thousand (150,000) shares of Class A Common Stock of Standard Power and Light Corporation (Delaware) to be delivered to Ladenburg or their nominee, pursuant to paragraph 1 of this Agreement, shall be sold without the consent of both Byllesby and Ladenburg, and that in the event that any of said three hundred thousand (300,000) shares of Class A Common Stock of Standard Power and Light Corporation (Delaware) shall be sold, the sale shall be made equally for the account of Ladenburg and of Byllesby, unless a contrary agreement shall have been made in writing signed both by Ladenburg and by Byllesby prior to any such sale.

7. To assure and secure the performance of the agreements made by the parties hereto contained in paragraphs 5 and 6 of this Agreement, the parties hereto agree that there shall be deposited with The Chemical National Bank of New York:

(1) By Ladenburg: One hundred fifty thousand (150,000) shares of Class A Common Stock of Standard Power and Light Corporation (Delaware), and fifteen thousand (15,000) shares of Class B Common Stock of Standard Power and Light Corporation (Delaware), and five hundred (500) shares of Common Stock of United Railways Investment Holding Corporation.

(2) By Standard and/or by Byllesby: One hundred fifty thousand (150,000) shares of Class A Common Stock of Standard Power and Light Corporation (Delaware), and fifteen thousand (15,000) shares of Class B Common Stock of Standard Power and Light Corporation (Delaware), and five hundred (500) shares of Common Stock of United Railways Investment Holding Corporation.

Such deposit shall be made concurrently by Ladenburg, Standard and Byllesby as and when the aforesaid shares of stock are respectively issued and delivered to them or their nominees respectively.

Such deposit shall be made pursuant to an agreement with The Chemical National Bank of New York, or a letter of instructions to The Chemical National Bank of New York satisfactory to counsel for all parties, which shall contain provisions consistent with the provisions of this Agreement and devised for the purpose of effectuating its provisions, including the authority to The Chemical National Bank of New York to release shares of Class A Common Stock of Standard Power and Light Corporation (Delaware) as and when the same shall be sold with the consent of Ladenburg and Byllesby, and to release shares of Class A Common Stock of Standard Power and Light Corporation (Delaware), Class B Common Stock of Standard Power and Light Corporation (Delaware) and Common Stock of United Railways Investment Holding Corporation against payment therefor, as hereinabove provided, to The Chemical National Bank of New York for account of the party entitled to such payment in any of the events hereinabove specified in which any party may be entitled to purchase from another party such shares of Class A Common Stock and/or Class B Common Stock of Standard Power and Light Corporation (Delaware) and/or shares of Common Stock of United Railways Investment Holding Corporation.

8. Ladenburg agree that they will always permit at least two of the members of their firm as it now or hereafter may be constituted to act as directors of Pittsburgh Utilities Corporation, if nominated and elected by the stockholders; and that they will use their best endeavors to procure such nomination and election if thereunto requested by Byllesby. Byllesby agrees that it will always permit at least two of its executives to act as directors of Pittsburgh Utilities Corporation if nominated and elected by the stockholders; and Byllesby and Standard jointly and severally agree that they will use their best endeavors to procure such nomination and election if thereunto requested by Ladenburg.

9. This Agreement and the deposit of stock provided for by paragraph 7 shall continue either until the termination of both the Pittsburgh Utilities Corporation Voting Trust dated March 30, 1923, and the Pittsburgh Utilities Corporation Voting Trust dated January 17, 1925, or until the dissolution or complete liquidation of Pittsburgh Utilities Corporation, pursuant to Agreement reached between Ladenburg and Byllesby, whichever event shall first occur; except that the provisions of paragraph 6 hereof with respect to the sale by the parties of Class A Common Stock of Standard Power and Light Corporation (Delaware) shall continue, notwithstanding the termination of the other parts of this Agreement, and notwithstanding the release of said stock from deposit with The Chemical National Bank of New York upon the termination of the other

parts of this Agreement, until the expiration of ten years from the date of this Agreement.

10. The term Ladenburg means not only the present firm of Ladenburg, Thalmann & Co., but any person, firm, association or corporation which may hereafter carry on the business now conducted by Ladenburg, Thalmann & Co.

The term Standard means not only the present corporation of Standard Gas and Electric Company, but any person, firm, association or corporation which may hereafter carry on the business now conducted by Standard Gas and Electric Company.

The term Byllesby means not only the present corporation of H. M. Byllesby and Company, but any person, firm, association or corporation which may hereafter carry on the business now conducted by H. M. Byllesby and Company.

IN WITNESS WHEREOF the parties hereto have duly executed these presents under seal as of the date hereof.

[SEAL]

LADENBURG, THALMANN & Co., (L. S.)
By MORITZ ROSENTHAL

H. M. BYLLESBY AND COMPANY,
By J. J. O'BRIEN, *President*.

Attest: C. H. O'REILLY,
Secretary.

[SEAL]

STANDARD GAS AND ELECTRIC COMPANY,
By B. W. LYNCH, *Vice President*.

Attest: M. A. MORRISON,
Secretary.

EXHIBIT No. 1927

[From Docket 31-420, Securities and Exchange Commission]

MEMORANDUM OF AGREEMENT BETWEEN H. M. BYLLESBY AND COMPANY (HEREIN-AFTER CALLED BYLLESBY) AND STANDARD GAS AND ELECTRIC COMPANY (HEREINAFTER CALLED STANDARD), DATED JUNE 19, 1925.

WHEREAS, Standard and Byllesby in the year 1924 formed Standard Power and Light Corporation under the laws of the State of Maryland, which has an issued capitalization of 100,000 shares of Preferred Stock without par value and 400,000 shares of Common Stock without par value, of which 180,000 shares of Common Stock are owned by Standard and 120,000 shares of Common Stock are owned by Byllesby; and

WHEREAS, Byllesby has acquired a majority of the outstanding stock of United Railways Investment Company and a substantial number of shares of stock of Pittsburgh Utilities Corporation, which corporations together control Philadelphia Company, which in turn controls a large public utility and street railway system in and about Pittsburgh, Pennsylvania; and

WHEREAS, Standard desires to acquire an interest in said public utility and street railway system but neither Standard nor Byllesby is able to acquire any measure of control in respect thereof by reason of the existence of certain voting trusts which are controlled by Ladenburg, Thalmann & Co.; and

WHEREAS, Standard and Byllesby have for some months been in negotiations with Ladenburg, Thalmann & Co. and have reached the basis of an agreement with said Ladenburg, Thalmann & Co., by virtue of which Ladenburg, Thalmann & Co. shall surrender one-half control and retain one-half control, as well as a one-half interest in the equity; and

WHEREAS, said one-half control is to be exercised by Ladenburg, Thalmann & Co. by the ownership of one-half of the voting stock in two new corporations to be formed, to-wit, Standard Power and Light Corporation to be formed under the laws of the State of Delaware to own a controlling interest in Pittsburgh Utilities Corporation and United Railways Investment Holding Corporation to be formed under the laws of the State of Delaware to own a controlling interest in United Railways Investment Company (which corporation has a valuable asset interest in Pittsburgh Utilities Corporation but not a controlling interest enabling it to control the Philadelphia Company system which control is vested in Pittsburgh Utilities Corporation); and

WHEREAS, Standard Power and Light Corporation (of Maryland) will acquire 100,000 shares of the Preferred Stock of the new Standard Power and Light Corporation (of Delaware) and 410,000 shares of its common stock for a consideration of \$11,400,000 and distribute 100,000 shares of Preferred Stock and

110,000 shares of Common Stock of said Delaware corporation to the holders of Trust Receipts calling for the delivery of 100,000 shares of its Preferred Stock and 100,000 shares of its Common Stock and will distribute the remaining 300,000 shares of Common Stock of said Delaware corporation to Byllesby and Standard in lieu of the 300,000 shares of its common stock now severally held by them as aforesaid; and

WHEREAS Byllesby and Standard, pursuant to arrangement with Ladenburg, Thalmann & Co., will be obligated to deliver to said Ladenburg, Thalmann & Co. 150,000 out of the said 300,000 shares of common stock of said Delaware corporation; and

WHEREAS, said Standard Power and Light Corporation (of Delaware) will issue 30,000 shares of Class B Common Stock, constituting its sole voting stock, of which only 15,000 shares will be issued to Ladenburg, Thalmann & Co., the remaining 15,000 shares being issuable to Standard and Byllesby, and Byllesby claims the right to subscribe to two-fifths thereof by reason of its proportionate interest in the common stock of Standard Power and Light Corporation (of Maryland) and Standard is anxious to subscribe to the whole thereof and exclude Byllesby from subscribing to any part thereof, so that, if there should be any future diversity of interest between Standard and Byllesby, Standard would not be in the position of holding a minority interest; and

WHEREAS, Standard is desirous of acquiring the asset value incident to the ownership of a majority of the stock of United Railways Investment Company to be represented by the 70,000 shares, of the par value of \$100 each, of Preferred Stock of United Railways Investment Holding Corporation;

NOW, THEREFORE, this memorandum of agreement disposes of all the foregoing matters as follows:

1. Standard shall have the sole right to subscribe to the 15,000 shares of voting stock of the new Standard Power and Light Corporation, and Byllesby surrenders its right to subscribe to the same, in consideration whereof Standard agrees to pay to Byllesby the sum of \$800,000 and to contribute 130,000 out of the 150,000 shares of common stock of Standard Power and Light Corporation to be paid to Ladenburg, Thalmann & Co., and Byllesby, in further consideration for the aforesaid agreements of Standard, agrees to contribute the remaining 20,000 shares of said common stock to be paid to Ladenburg, Thalmann & Co. and to make to Standard a fair cash allowance, estimated at \$125,000, as income on its investment in Standard Power and Light Corporation of Maryland.

2. Byllesby agrees to sell to Standard and Standard agrees to purchase from Byllesby as, if and when issued the aforesaid 70,000 shares of preferred stock of United Railways Investment Holding Corporation for the sum of \$7,000,000 and Byllesby in further consideration agrees to pay to Standard from time to time while Standard's investment in such stock shall not be income-producing, sums equivalent to a fair rate of dividends on said shares of preferred stock.

3. Based on the foregoing adjustment, Byllesby and Standard mutually agree with one another to enter into the proposed contract with Ladenburg, Thalmann & Co. of which the terms have been substantially settled by the negotiations aforesaid.

H. M. BYLLESBY AND COMPANY

By R. W. GRAF,

Vice President

STANDARD GAS AND ELECTRIC COMPANY

By B. W. LYNCH

Vice President

"EXHIBIT No. 1928," introduced on p. 12553, is on file with the Securities and Exchange Commission

EXHIBIT No. 1929

Securities Sold to the Public by Standard Power and Light Corp. and its Subsidiaries, March 22, 1926-Dec. 31, 1929 and Percentages of Participations Therein

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Title of Issue	Date of Issue	Amount of Issue	H. M. Bylesby & Co.	Ladenburg, Thalman & Co.	First National Bank, N. Y.	First Security Co.	Chase Securities Corp.	Union Trust Co. Pittsburgh	Hayden, Stone & Co.	Harris, Trust & Savings Bank	Lee, Higginson & Co.	Total
1. Pittsburgh Utilities Corp. Iss of 1928	4/7/26	\$10,000,000	25.0	25.0	16.0	-----	16.0	10.0	8.0	-----	-----	100.0
2. Standard Power & Light Corp. Iss of 1927	2/4/27	24,000,000	45.0	45.0	-----	-----	-----	10.0	-----	-----	-----	100.0
3. Duquesne Light Co. 4 1/4s of 1927	4/13/27	55,000,000	22.5	22.5	14.4	-----	14.4	9.0	7.2	8.0	5.0	100.0
4. Duquesne Light Co. 4 1/4s of 1927	10/4/27	10,000,000	22.5	22.5	14.4	-----	14.4	9.0	7.2	8.0	5.0	100.0
5. Philadelphia Company Iss of 1927	12/15/27	60,000,000	22.5	22.5	14.4	-----	14.4	9.0	7.2	-----	-----	100.0
6. Duquesne Light Co. Pfd. Stock	12/16/27	20,000,000	23.7	23.7	-----	15.1	15.1	9.6	7.6	-----	5.2	100.0
7. Philadelphia Company Pfd. Stock	1/19/28	86,152 sh.	23.7	23.7	-----	15.1	15.1	9.6	7.6	-----	5.2	100.0
8. Duquesne Light Co. Pfd. Stock	12/7/28	\$7,500,000	23.7	23.7	-----	15.1	15.1	9.6	7.6	-----	5.2	100.0

Source: From "Names of Issues, and Participants Therein, of Securities sold to the Public from January 1, 1924, to December 31, 1929, by Standard Gas and Electric Company or any of the Corporations in its System", Commission's Exhibit No. 21, together with supplementary data from Commission's Exhibit No. 22, in the Matter of H. M. Bylesby and Company and The Bylesby Corporation, S. E. C. Docket No. 31-379 and 31-420.

"EXHIBIT No. 1930," introduced on p. 12555, is on file with the committee.

EXHIBIT No. 1931

[From Docket 31-420, Securities and Exchange Commission]

NOTE: Figures in brackets refer to pages of the original.

DECEMBER 21, 1929.

Memorandum:

BANKING

In view of the fact that it is anticipated that United States Electric Power Corporation and H. M. Bylesby and Company will each have a very large investment in Standard Power and Light Corporation, and, through it, in Standard Gas and Electric Company, it is deemed advisable to provide, so far as is practicable, at the present time, for strong and continued financial support in connection with these companies and their respective subsidiaries, sub-subsidiaries and affiliated companies which will, from time to time, require the services of bankers in the placing of issues of securities necessary to raise money to defray expenditures needed in the public interest, to refund existing obligations and for other and necessary or advisable corporate purposes. To that end, United States Electric Power Corporation and H. M. Bylesby and Company contemplate that all financing for Standard Power and Light Corporation and Standard Gas and Electric Company, and their respective subsidiaries, sub-subsidiaries, and affiliated companies, shall be undertaken as to interest and liability therein, at original cost, as follows, provided in each instance that the terms and conditions of such financing shall be undertaken on fair prices and on fair terms, considering the market conditions at the time:

United States Electric Power Corporation-----	75%
H. M. Bylesby and Company-----	25%

[2] The foregoing is subject to the provisions hereafter made relating to the interests of others in Philadelphia Company financing.

In view of the fact that Ladenburg, Thalmann & Co. have for many years been associated in financing of the Philadelphia Company and its subsidiaries, and in view of the further fact that Philadelphia Company will become one of the important subsidiaries of Standard Gas and Electric Company, it has been deemed advisable that Ladenburg, Thalmann & Co. shall be a party to this memorandum.

OTHER BANKING HOUSES

1. The provisions of this section are not applicable to Philadelphia Company financing which is dealt with below.

2. As to all other financing by Standard Power and Light Corporation and Standard Gas and Electric Company and their respective subsidiaries, sub-subsidiaries and affiliated companies, all existing agreements relating to banking and involving the services of other banking houses shall be disregarded by H. M. Bylesby and Company and United States Electric Power Corporation in dealing with the respective companies.

3. In the event that H. M. Bylesby and Company and United States Electric Power Corporation shall mutually agree to permit other banking houses to join with them in [3] any piece of financing involving Northern States Power Company, Louisville Gas and Electric Company, Oklahoma Gas and Electric Company and San Diego Consolidated Gas and Electric Company (this provision applying only to respective properties as they now exist and the extensions thereof), United States Electric Power Corporation agrees that H. M. Bylesby and Company shall have an interest and liability in such financing of not less than 20% irrespective of what interests may be granted in any such financing to other banking houses.

4. In the event that H. M. Bylesby and Company and United States Electric Power Corporation shall mutually agree to permit other banking houses to join with them in any piece of financing involving any other company covered by this memorandum or any new properties acquired by Standard Power and Light Corporation, Standard Gas and Electric Company, and their respective subsidiaries, sub-subsidiaries and affiliated companies, the interest of such other banking houses shall be provided for ratably out of their respective basic interests by United States Electric Power Corporation and H. M. Bylesby and

Company, that is, United States Electric Power Corporation shall provide 75% thereof and H. M. Byllesby and Company shall provide 25% thereof.

LEADERSHIP

H. M. Byllesby and Company is to have leadership [4] in all financing of Standard Gas and Electric Company itself and Oklahoma Gas and Electric Company and the subsidiaries of the latter. Bankers selected by United States Electric Power Corporation are to have the leadership in all financing of Standard Power and Light Corporation and its subsidiaries and sub-subsidiaries and affiliated companies (other than Standard Gas and Electric Company itself and Oklahoma Gas and Electric Company and the subsidiaries of the latter) and all subsidiaries, sub-subsidiaries and affiliated companies of Standard Gas and Electric Company.

In all cases in which H. M. Byllesby and Company has leadership, a banking firm affiliated with and selected by United States Electric Power Corporation shall have second position. In all cases in which a banking firm selected by United States Electric Power Corporation has leadership, H. M. Byllesby and Company shall have second position subject only as hereinafter provided in respect to Philadelphia Company and subsidiaries.

SYNDICATE MANAGERS

In connection with any financing, it is understood and agreed that whether H. M. Byllesby and Company or a banking house selected by United States Electric Power Corporation leads the business, the banking house leading the business shall keep the books of account, send out all necessary notices and shall be the operating manager of the [5] syndicate, in accordance with general practice. The association of other members as joint syndicate managers of any group purchasing securities shall be a matter of determination between H. M. Byllesby and Company and United States Electric Power Corporation in all cases, except with reference to the Philadelphia Company, its subsidiaries, sub-subsidiaries and affiliated companies, in which it shall be a matter of determination by H. M. Byllesby and Company, United States Electric Power Corporation and Ladenburg, Thalmann & Co., up to January 17, 1935, and thereafter shall be a matter of determination by H. M. Byllesby and Company and United States Electric Power Corporation.

PHILADELPHIA COMPANY AND SUBSIDIARIES

It is contemplated that until January 17, 1935, the financing of Philadelphia Company and its subsidiaries shall be undertaken as to interest and liability therein as follows:

[6] By a banking group heretofore formed by Ladenburg, Thalmann & Co., including H. M. Byllesby and Company and without any association therein of Harris, Forbes & Co. or Harris Trust and Savings Bank----	50%
By United States Electric Power Corporation, including Harris, Forbes & Co. and Harris Trust and Savings Bank-----	50%

After January 17, 1935, it is contemplated that all financing of Philadelphia Company and its subsidiaries shall be undertaken as to interest and liability therein as follows:

By United States Electric Power Corporation-----	65%
By H. M. Byllesby and Company-----	25%
By Ladenburg, Thalmann & Co.-----	10%

Until January 17, 1935, (a) in case of financing of the Philadelphia Company, second place is to be taken by H. M. Byllesby and Company, and third place by Ladenburg, Thalmann & Co.; (b) in the case of financing of Duquesne Light Company, second place is to be taken by Ladenburg, Thalmann & Co., and third place by H. M. Byllesby and Company, and (c) in the case of any other subsidiary of Philadelphia Company, H. M. Byllesby and Company and Ladenburg, Thalmann & Co. are to alternate in second and third places in accordance with their present arrangement. After January 17, 1935, it is contemplated that the position of Ladenburg, Thalmann & Co. in such financing shall follow the position of every other banking house having an interest and liability in said financing of 15% or more; provided that in any case Laden-

burg, Thalmann & Co., without surrendering its interest and liability in said financing, may decline publicly to appear therein.

The foregoing provisions as to the Philadelphia Company and its subsidiaries apply only to the properties and to the extensions of Philadelphia Company and its subsidiaries as they now exist. On the other hand, if Philadelphia Company and/or any of its subsidiaries shall be transferred to outside interests and other properties are acquired by Standard Gas and Electric Company or Standard [7] Power and Light Corporation in lieu thereof, the aforesaid banking arrangements as to Philadelphia Company shall apply to such substitute; provided that if the consideration for the acquisition of such substitute shall include a substantial amount of cash or substantial properties or securities other than the Philadelphia Company and/or any of its subsidiaries and if the gross earnings of such substitute shall exceed the gross earnings of the Philadelphia Company and/or any of its subsidiaries (as the case may be) so substituted, then the interest of Ladenburg in the financing of such substitute shall be reduced in the proportion that the gross earnings of such substitute bear to the gross earnings of the Philadelphia Company and/or any of its subsidiaries (as the case may be) so substituted.

The foregoing is without prejudice to any arrangement which may be made in the future by mutual consent to include Ladenburg, Thalmann & Co. in some share of the general financing of Standard Gas and Electric Company and its subsidiaries.

MISCELLANEOUS PROVISIONS

Nothing in the foregoing is to be deemed to exclude the possibility of financing by Standard Power and Light Corporation of Standard Gas and Electric Company or their respective subsidiary or sub-subsidiary or affiliated corporations without the intervention of bankers as distributors or securities or underwriters by direct offering of [8] securities to their stockholders or to their customers. It is contemplated that all customer ownership companies shall be conducted by H. M. Byllesby and Company as heretofore, but without substantial profit to them.

H. M. BYLLESBY AND COMPANY

By J. H. BRIGGS (Sgd.) *Vice-President.*

UNITED STATES ELECTRIC POWER CORPORATION

By VICTOR EMANUEL (Sgd.) *President*

LADENBURG, THALMANN & Co.

By WALTER T. ROSEN (Sgd.) *General Partner*

"EXHIBIT No. 1932" appears in full in the text, p. 12563.

EXHIBIT No. 1933

[From the files of Schroder Rockefeller & Co., Inc. Memorandum by Carlton P. Fuller]

MAY 16, 1929.

STANDARD GAS & ELECTRIC COMPANY

A letter on present status for London:

(1) Our cable No. 361 of April 12th outlined the possibility of litigation in which we did not desire to become involved and their reply No. 183 of April 13th agreed with this attitude and suggested that Harrison Williams and Electric Shareholdings press the attack. No communication with London has taken place since, but the following events have occurred:

(2) G. Reginald Schumann as nominee for Hydro-Electric signed a letter addressed to Standard Gas & Electric in conjunction with other stockholders demanding access to the books. This demand was refused.

(3) Emanuel's next step was to collect proxies for the annual meeting of Standard Gas, which was held May 15th. He procured 217,000 shares which were voted against Byllesby's nominations for directors.

(4) Schumann signed a proxy for Hydro-Electric stock in his name and in favor of Emanuel's men upon cable authorization from Fisher.

(5) Emanuel now asks Schumann as nominee to sign two further letters: (a) a letter to Siegbert & Riggs, authorizing them to represent the stock in his name in legal proceedings against Standard Gas (b) A letter to Standard Gas

& Electric Company in complete legal detail demanding access to their books and setting forth the reasons for such demand, presumably to be submitted to the court upon another refusal of the Standard Gas. Fisher has cabled special authorization to Schumann to sign the letter to Siegbert & Riggs under (a) above.

Mr. A. Dulles states that there is no possibility of Schrobancro being drawn into these proceedings officially. It is of course possible that in the course of the trial some lawyer might refer to Schumann as employee of Schrobancro, and it is quite probable that our close relations to Fisher and Hydro Electric and Lowenstein will tend to identify us in the public mind with the litigation. Incidentally, Mr. Dulles says that this case, if it comes to trial, will be followed with the closest interest by all lawyers and will doubtless be one of the outstanding cases of the year, since it will make law on this particular subject.

Emanuel has sent Fisher rather complete details which London might ask Fisher to show them.

(Initialed:) CPF:AB

EXHIBIT No. 1934

[From the files of Schroder Rockefeller & Co., Inc. Cable from Frank Tiarks to J. Henry Schroder & Co., London]

OUTGOING CABLE

J. HENRY SCHRODER BANKING CORPORATION,

New York, October 15th, 1928.

FCT NO

SCHRODPRIV,

J. HENRY SCHRODER & Co.,
London.

No. 277

Second meeting with Emanuel today shows that O'Brien not yet anxious to play with us but still nervous of our attitude as important shareholders towards his \$1,000,000. preferred stock control Stop

Emanuel convinced that Standard Gas better and cheaper investment today than any of Hydro holdings as price kept down by existence of preferred control stock Stop

Emanuel and we all advise immediate sale of all Central States Electric Buffalo Niagara Southeastern Power & Light with a view to investing part or all proceeds in Standard Gas and thus improving our investment and strengthening our position vis-a-vis O'Brien Stop

Emanuel is seeing O'Brien again next week and proposes to alter his tactics telling him we have increased our holdings and have intention of further increasing Stop

Also that we are not anxious to buy his preferred stock as we doubt validity and fear public enquiry Stop

In view of O'Briens fears Emanuel feels we can obtain representation on board and interest in finance as large shareholders and have such a nuisance value as critics of all Byllesby operations as to make preferred stock of little value to them Stop

Plan is to force O'Brien to join Emanuel and ourselves in all financial operations of Standard Gas and between us gradually obtain real control of common stock instead of trick control as now held by Byllesby Stop

If O'Brien inclined to cooperate on these lines corporation would be formed along lines described in my notes mailed to Baron into which Emanuel and Hydro would place all their Standard Gas common and O'Brien would place his preferred stock and some Byllesby stock in exchange for common stock of corporation for amounts to be agreed Stop

This corporation would proceed to acquire real control and finance its operations by means of bank borrowing followed by issues of stock and bonds Stop

Next steps contemplate very important mergers of companies known to Fisher Stop

As regards our holding North American we propose seeing Harrison Williams with a view to forcing them either to bid us a good price for bulk our holdings or give us an intimate position in all his operations which Emanuel believes might be very valuable to us all Stop

This policy of cooperation with O'Brien seems to us far wiser and safer than buying ourselves at a high price into the Byllesby position which even O'Brien seems not too happy about and far less cash will be required from us Stop

Should appreciate your prompt reaction on these ideas and authority if favorable to proceed with negotiations O'Brien Harrison Williams and immediate sale of above mentioned stocks Stop

Regards,

FRANK.

EXHIBIT No. 1935

[From the files of Schroder Rockefeller & Co., Inc.]

COPY OF CABLE FROM FISHER TO LOEWENSTOL, BRUSSELS, OCTOBER 19, 1929

Subject to our counsel and Byllesbys counsel coming to terms between them upon language of series of written agreements embodying undermentioned settlement we have settled with Standgas board after long and exhaustive negotiations on following conditions *firstly* Byllesby surrender their one million preferred for cancellation *secondly* Stands board equally divided our group appoints chairman company and chairman finance committee Byllesby keep presidency *thirdly* Usepeo buys Ladenburgs position in Standpower and Light representing 37½ percent of common stock of that company stop Board of that company equally divided our group appoints chairman company and chairman executive committee Byllesby appoints president and chairman finance committee *fourthly* new company formed w h will become shareholder of half all Standgas common outstanding board this company equally divided our group appoints chairman of company and of executive committee Byllesby receives presidency and chairmanship of finance committee our group appoints all officers stop Will explain to you on my return by what series of transactions this new company becomes possessed of half all Standgas common outstanding stop It will therefore own control Standgas *fifthly* Byllesby entitled continue manage properties but Standgas bylaws to be altered by inserting express provision that affirmative vote of three quarters of all directors necessary for any of following acts purchase properties sell properties purchase securities sell securities alter rates conclude any power contacts over 10000 k. w. any change in bookkeeping practice determine public relations fix maintenance and depreciation approve annual budget decide new construction vote subsidiary shares issue securities declare dividends merge with other companies stop This gives us full power protect our investment and means our cooperation necessary for everything material *sixthly* our group receives 75 percent of banking which means issuance new securities to provide for annual growth parent company and subsidiaries totalling thirty to sixty million dollars *seventhy* when steps to accomplish above completed we withdraw our legal action stop Emanuel has borne largest share work and deserves great credit please communicate above confidentially Tabri Baron Schroder

FISHER.

EXHIBIT No. 1936

[From the Files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corporation, New York, to J. Henry Schroder & Co., London]

From ISSUES Department.

Send the following Cable and Charge:

Expense Addressee

To SCHRODPRIV, London.

Date September 12, 1929.

Account: #1.

Authorized JLS. CPF

(Handwritten)

Reference United States Electric Power Corporation your Wednesday cable to Fisher could not have presented situation more effectively and it made deep impression on him stop As result your wire and our efforts he has reopened question our position stop We understand Fisher cabling you tonight that company organizers agree give us representation provided Baron Schroder would also accept invitation join board stop We of course recognize senior's general reluctance assume new directorships but feel present case extraordinarily important stop Company will undoubtedly wield considerable influence in American utility field and presence of Chellis Austin new president of Equitable Trust and three Harris Forbes partners on board assures dignity and standing stop Believe senior's joining board accompanied by representative of Schrobanco would give us real weight in situation and enable us through our efforts

here work out interesting banking position with Harris Forbes stop As you know Gray is convinced that present period is probably only opportunity for Schrobanco to gain foothold in utility regroupings of this country stop That is why we have made such efforts obtain position in present combination of interests stop Furthermore while we have no assurance we think if senior later desires withdraw in favor some other London partner this could probably be arranged stop Therefore hope earnestly senior may see way clear make exception this instance and accept invitation stop Final arrangements being completed rapidly therefore important have reply early as convenient.

(Stamped:) Cable Dept., J. Henry Schroder Banking Corp., N. Y., Sep. 12, 1929.

Received R; Time

EXHIBIT No. 1937

[From the Files of Schroder Rockefeller & Co., Inc. Cable from Baron Schroder to C. L. Fisher]

[Western Union]

CD34=CABLE LONDON 110 1/49
LCo SCHRODPRIV FOR FISHER—NYK—

Authorized JLS. CPF
(Handwritten)

Greatly appreciate your efforts in interest of Schrobanco and although as you know I never accept directorships I wish to show you and your colleagues my appreciation of their good will by accepting the position on the board understanding of course that Schrobanco has a fair position in the banking arrangements to which end you will doubtless assist them stop Although I have accepted this kind offer please tell your associates that I should much prefer in their own and your interest to nominate my son who will be more often in New York than I and who is sailing for New York on Wednesday.

BARON SCHRODER.

EXHIBIT No. 1938

[From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corp., New York, to Baron Schroder]

From ISSUES Department.
Send the following Cable and Charge:
Expense Addressee
To SCHRODPRIV for BARON SCHRODER

Date September 13, 1929.
Account:
Authorized: JLS. CPF
(Handwritten)

Your 477

United States Electric Power Corporation satisfactory conversation with Harris Forbes makes us feel we shall receive fair position in banking business stop We are deeply appreciative of your acceptance which we realize was most unusual departure and was purely to further Schrobanco's interests stop Hope that new connection can be developed in manner to justify present decision and shall certainly bend every effort to that end stop Have communicated substance of foregoing to Fisher and understand he is cabling tonight.

(Stamped:) J. Henry Schroder Banking Corp., N. Y., Sep. 13, 1929

EXHIBIT No. 1939

[From the files of Schroder Rockefeller & Co., Inc. Cable from Baron Schroder to J. Henry Schroder Banking Corp., New York]

[Original]

CABLEGRAM
From Schrodpriv
BARON SCHRODER,

Date sent 9/13/29
Date rec'd 9/13/29

London

477 See my cable Fisher in which I have accepted directorship subject to your receiving fair position in banking business stop I have only done this in the interest of Schrobanco.

642FR

(Stamped on margin with check marks:) Simpson; Issues.

EXHIBIT No. 1940-4

Supplementary Exhibit A to table "Securities sold to the public by Standard Gas and Electric Company or any of the corporations in its system January 7, 1930 to June 1, 1936, and percentages of participations therein."

Title of Issue	Date of Issue	Amount of Issue	1 Percentage of Interest of Outside Investment Banking Houses	2 Amount of this Per Cent Provided by U. S. E. P.	3 Per Cent of Total Provided by U. S. E. P. (Col. 2÷ Col. 1)	4 Amount of this Per Cent Provided by H. M. Byllesby & Company	Per Cent of Total Provided by H. M. Byllesby & Company (Col. 4÷ Col. 1)
Wisconsin Public Service Corp. 4s of 1932.....	7/15/31	\$2, 500, 000	10%	7. 48%	74. 8%	2. 52%	25. 2%
Wisconsin Public Service Corp. 6s of 1933.....	6/24/32	2, 500, 000	10%	7. 50%	75. 0%	2. 50%	25. 0%
Wisconsin Public Service Corp. 5½s of 1939.....	3/22/35	7, 000, 000	20%	15. 00%	75. 0%	5. 00%	25. 0%
The California Oregon Power Co. 4s of 1966.....	4/6/36	13, 500, 000	31. 10%	24. 26%	78. 0%	6. 84%	22. 0%

Source: Percentage participations compiled from "Names of Issues, and Participants Therein, of Securities Sold to the Public from Jan. 1, 1930, to Apr. 22, 1938, by Standard Gas & Electric Company or any of the Corporations in its System," Commission's Ex. No. 20, together with supplementary data from Commission's Exhibit No. 22, *In the Matter of H. M. Byllesby & Co. and The Byllesby Corp.*, Docket No. 31-379 and 31-420.

EXHIBIT No. 1940-3

Supplementary Exhibit B to Table "Securities sold to the public by Standard Gas and Electric Company or any of the Corporations in its System January 7, 1930 to June 1, 1936, and Percentages of Participations Therein."

Participants	Issues	
	100,000 Shs. Philadelphia Co. 8s. Prior Pfd. Stock (offering date: 6/26/30), Percentage Participation	\$5,000,000 Duquesne Light Co., 4½'s of 1867 (offering date: 3/5/32), Percentage Participation
<i>U. S. E. P. Group.</i>		
W. C. Langley & Co.....	23. 5%	13. 5%
Harris, Forbes & Co.....	16. 5	26. 5
A. C. Allyn & Co.....	10. 0	10. 0
Sub-total.....	50. 0%	50. 0%
<i>Ladenburg, Thalmann Group:</i>		
Ladenburg, Thalmann & Co.....	11. 8%	11. 8%
H. M. Byllesby & Co.....	11. 8	11. 8
Chase Securities Corp.....	7. 6	7. 6
First Security Co.....	7. 6	7. 6
Union Trust Co. (Pittsburgh).....	4. 8	4. 8
Haystone Securities Corp.....	3. 8	3. 8
Lee, Higginson & Co.....	2. 6	2. 6
Sub-total.....	50. 0%	50. 0%
Grand Total.....	100. 0%	100. 0%

Source: Percentage participations compiled from "Names of Issues, and Participants Therein, of Securities Sold to the Public from Jan. 1, 1930, to Apr. 22, 1938, by Standard Gas & Electric Company or any of the Corporations in its System," Commission's Ex. No. 20, together with supplementary data from Commission's Exhibit No. 22, *In the Matter of H. M. Byllesby & Co. and The Byllesby Corp.*, Docket No. 31-379 and 31-420.

Exe'2'9 N*. 1940-4

Supplementary Exhibit C to Table "Securities Sold to the Public by Standard Gas and Electric Company or Any of the Corporations In Its System January 7, 1930 to June 1, 1936, and Percentages of Participations Therein."

Participants	Issue \$70,000,000 Duquesne Light Co. 3½s of 1965 (offering date: 7/18/35)	
	Percentage Participations in total issue	Percentage Participation in the 74.4% taken by Bylesby, Ladenburg, Thalmann, and the U. S. E. F. group
H. M. Bylesby & Co.	17.6%	23.6%
Ladenburg, Thalmann & Co.	7.6	10.2
U. S. E. F. Group:		
W. C. Langley & Co.	11.9	16.0
The First Boston Corp.	22.1	29.7
A. C. Allyn & Co.	8.9	12.0
Emanuel & Co.	6.3	8.5
Total U. S. E. F. Group.	49.2%	66.2%
Total above firms.	74.4%	100.0%
Other firms.	25.6	
Total.	100.0	

Source: Percentage participations compiled from "Names of Issues, and Participants Therein, of Securities Sold to the Public from Jan. 1, 1930, to Apr. 22, 1938, by Standard Gas & Electric Company or any of the Corporations In its system," Commission's Ex. No. 20, together with supplementary data from Commission's Exhibit No. 22, *In the Matter of H. M. Bylesby & Co. and The Bylesby Corp.*, Docket No. 31-379 and 31-420.

"EXHIBIT No. 1941," introduced on p. 12576, is on file with the committee.

"EXHIBIT No. 1942," introduced on p. 12576, is on file with the committee.

EXHIBIT No. 1943

[From the files of Schroder Rockefeller & Co., Inc. Memorandum by Carlton P. Fuller]

GENERAL EVALUATION OF FUTURE PROSPECTS OF STANDARD GAS & ELECTRIC CORPORATION

FAVORABLE POINTS

1. Working capital position is reasonably satisfactory.
2. Depreciation has probably been adequate, although not generous.
3. Of the prior capitalization of the system, a fairly large amount (38%) is in preferred stock, allowing some elasticity by reducing preferred dividends before receivership is threatened; this is already being taken advantage of (bonds form 55% of total capitalization and common stock 7%).
4. If business improves without any serious inflationary period, a moderate increase in the system's gross will remedy most of the dangers.
5. In case of inflation there is a possible hedge in the \$35,000,000 lock-up in Deep Rock Oil now in receivership.

From point of view of U. S. Electric Corporation:

- (a) An increase in gross for Standard Gas of only 5% would suffice to cover U. S. Electric's bank interest, if present costs, etc. were maintained.
- (b) There is considerable financing in the system to be counted upon and hitherto U. S. Electric has had a small participation in the profits of such issues.

UNFAVORABLE POINTS

1. \$24,000,000 note maturity October 1st, 1935.
2. To take care of this maturity it will probably be necessary to offer some sweetening such as stock of the Duquesne Light Company which is the best

asset of the system and would therefore dilute the earnings of the parent company.

3. 16% of the system's gross is from traction properties.

4. The parent company has practically no interest in its subsidiaries other than the common stock which bears the brunt of any reduction in rates, regulations, etc.

5. There is no fundamental diversification because the system depends so largely on the Philadelphia Company with its Duquesne Light properties in Pittsburg, which could be easily affected by a bad rate case, a steel strike, etc. (See table attached.)

6. The Philadelphia Company has one of the highest rates of return on investment of any utility in the country, which might well make it a subject of attack sooner or later.

7. The second largest subsidiary, in point of gross income, contributes only 2% of Standard Gas' income (Northern States Power).

8. A smaller, but steady and dependable subsidiary, Louisville Gas & Electric, may eventually suffer from the Tennessee Valley Development by the Government.

9. Income tax regulations eliminating consolidated returns may cut down Standard Gas' net because of its numerous subsidiaries.

10. An application for rate reduction is now being fought in the Northern States territory and a franchise dispute is under way in Minneapolis.

11. Unforeseeable cash demands may arise from subsidiaries which would impair the moderately satisfactory current position of the holding company.

CPF:DF

8/10/34

EXHIBIT No. 1944

[From the Files of Schroder Rockefeller & Co., Inc. Cable from Vanderstraten, Brussels, to Albert Emanuel Company, New York]

[Copy]

SEPTEMBER 13, 1934.

Bruxelles

LC ALEMANUEL, New York:

Hydro Committee surprised learn Chasebank negotiating with group Harrison Williams cession securities pledged by Usepco feeling that Chasebank appeared disposed accept our proposals about which other banks had to be approached stop What is present position stop We suppose Chasebank could not conclude deal with Harrison Williams without Usepco's renunciation assets pledged or protracted formalities stop Usepco under no circumstances must give such renunciation but should endeavor obtain consent Chasebank that our negotiations be postponed for few weeks until Fisher's recovery stop Hydro Committee cabled following to Stone quote We understand Harrison Williams group might be negotiating with view to purchase by North American of securities pledged by Usepco as security for loan from Chasebank stop As you know Hydro largely interested in Usepco which is negotiating repayment loan stop Should be grateful if you would inform Harrison Williams that we should appreciate if in view excellent relations between our respective groups he would cable our Director Vanderstraten whose address is CANABELGE Brussels details of these alleged negotiations which would be detrimental to constructive plan Usepco hopes to put forward shortly and therefore should if possible be postponed until recovery of Fisher unquote Will advise you Stone's reply Please communicate present telegram to Usepco Committee and Common Regards

VANDERSTRATEN CANABELGE.

EXHIBIT No. 1945

[From the Files of Schroder Rockefeller & Co., Inc. Cable from Albert Emanuel Company, New York, to Vanderstraten, Brussels]

[Copy]

SEPTEMBER 16, 1934.

VANDERSTRATEN,

Canabelge, Brussels, (BELGIUM)

Reference your radiogram we convinced large and strong group acting with North American and that they approached Chasebank and perhaps one other of

the three banks to whom we owe money stop Banks in position sell notes or shares securing them stop Proposal submitted Fisher was one suggested by officer Chasebank which however was not definite commitment stop Arrangement was then negotiated with Byllesby giving us option on securities required and after we had satisfied ourselves funds could be raised from group we again saw this officer who in first instance at our suggestion took it up with one of the other banks and after some interval told us proposition unsatisfactory although we still hoped proposition or something similar would be acceptable stop As Fisher understood considerable delay was occasioned by summer vacations bank officials and at time we learned of North American negotiations we were awaiting counter suggestion from bank officials stop Bank takes position they have been cooperative and lenient regarding our situation over long period of time but never considered themselves estopped from considering any proposition from others stop We not renouncing any rights we may have but if banks decide sell due attractiveness other proposition we will probably have great difficulty in preventing or delaying sale stop So far we have not been able obtain consent for postponement negotiations until Fisher able act and dont think we will stop Other people seemingly using all possible pressure consummate quick deal stop We doing everything possible this side and believe might be able make deal along lines Fishers proposal to Granbery in London last March which would not entail more cash than proposal turned down but would involve giving banks certain amount USEPCO income notes ranking *pari passu* with new money which proposition would be better than Fishers March proposal as that entailed new money taking obligation or preferred stock ranking junior to notes given banks stop If American group willing proceed along these lines do you think this would be agreeable to you without awaiting Fishers recovery as prompt action appears necessary stop If time permits Granbery willing sail Tuesday to discuss in detail and may be able advise you of this Monday meantime would appreciate your immediate consideration and will be glad hear any word received from Stone.

ALEMANUEL, *Newyork*.

EXHIBIT No. 1946

(From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder & Co., London, to J. Henry Schroder Banking Corp., New York)

Date September 21, 1929.

Send following Cable and Charge:

Expense Addressee

To SCHRODERIV FOR PAM,

London.

Date September 21, 1934.

Account:

Authorized: JLS.

(Confidential.)

Hydro your 503 quite understand paragraph

After careful thought we believe we should pass on to you for what they may be worth our views regarding whole problem stop Please consider these views entirely personal and confidential as hydro at present working with USEPCO group and to suggest any change in this policy would be extremely delicate stop Our specific points as follows stop *One* USEPCOS entire assets consist of Standard Power & Light shares pledged outright for overdue bank loans which are greatly undermargined stop Hence Hydros equity in USEPCO must today be considered nonexistent and acquisition Standard Power & Light shares from banks by Hydro and associates or by anybody else really involves altogether new operation *Two* we believe questionable whether Hydro justified in putting new money into such operation jointly with members USEPCO group along lines we understand being discussed stop One reason is that Standard Power & Light shares themselves represent highly pyramided equity so far removed from actual operating earnings that impossible foretell what their value may ever be stop Another reason is that we believe USEPCO group consists discordant interests with some extremely weak members and no real force or competence in utility field stop For Hydro to contribute substantially to rehabilitation USEPCO would we think probably be throwing good money after bad stop *Three* if Williams acquires control Standard Power & Light and Standard Gas he will not count on purchase these shares ever showing profit but will attempt reimburse himself by purchase underlying bonds of operating companies at substantial discounts and then improving position these bonds by far-reaching corporate economies under auspices North American management stop

Feel convinced Williams will not conclude deal unless he has free hand to clean house and put Standard Gas operating companies on basis comparable with those of North American system stop *Four* in our opinion Hydros only real chance of recouping Standard Gas losses would be to form financial alliance with really strong utility interest such as North American and proceed along above mentioned lines *Five* We do not say this is necessarily best way to employ Hydros free cash but we do feel sure it would be greatly preferable to trying build something out of USEPCOS dead timber paragraph

We feel impossible convey these views to Granbery or Hydro interests in present circumstances as to do so would probably destroy our usefulness with parties here stop However believe these considerations should carry weight with you and Gray as directors.

EXHIBIT No. 1947

[From the Files of Schroder Rockefeller & Co., Inc.]

EXTRACT FROM MR. MOCARSKI'S LETTER NY 58 OF DECEMBER 17, 1934.

USEPCO

I presume you are fully posted about Granbery and Seagraves' negotiations in London and the fact that the bid made by Hydro (I think of \$2,000,000) for the Usepco indebtedness with the New York banks, has been rejected by these banks. It seems further that the banks asked for an improved bid but the Directors of Hydro felt that there is absolutely no point in raising the figure without even an intimation of what the banks have in mind. The Directors felt that it now is up to the banks to name their figure, as a counter proposal to the Hydro's bid.

According to what I heard, Fisher fooled everyone and does not plan to die or retire; although not completely well, he attends to his job and J. H. S. & Co., are no more worried about the Hydro being put on their shoulders.

When I was in Brussels, both Madame Loewenstein and Bobby Loewenstein were away and I did not try to get exact information as to what would happen in case of Fisher's death, lest my inquiry would get around. I gathered definite impression however that in the case of his demise the Belgians, including van der Staaten, have quite definite ideas who should assume the management.

Copy

JAS

1/4/35

EXHIBIT No. 1948

[From the Files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corporation, New York, to J. Henry Schroder & Co., London]

From EXECUTIVE Department.

Send the following Cable and Charge:

Expense Addressee
To SCHRODPRIV FOR PAM,
London.

Date 11/6/34.

Account:

Authorized: JLS.

(Handwritten over date:) 10/6/34.

Hydro our 385

We have privately ascertained following from North American one. They feel strongly that attractiveness of Standard Power or Standard Gas Equity to themselves or anyone else depends entirely on comprehensive readjustments among operating companies. Stop. By that they mean not only operations in securities (mentioned our Schroderprive 385 point three) but also improvement whole structure by realignments operating companies increased efficiencies. Etc. Stop.

Two. Byllesby quite prepared work with North American subject only to exploring question whether combination would arouse political hostility. Stop.

Three. North American does not plan ignore Usepco but rather disposed work out something which would include themselves, Byllesby, the creditor banks, and

Usepco group. Stop. They not certain whether really going ahead but may decide do so and foregoing represents their tentative views. Stop.

No objection your passing on these ideas in purely personal and informal way to Hydro. Stop. However please don't make this wire matter of record. Stop.

For our private information is there any news regarding Granbery conversations.

(Handwritten.) Copy in Usepco file.

EXHIBIT No. 1949

[From the Files of Schroder Rockefeller & Co., Inc. Memorandum by Robin Wilson]

USEPCO

Emanuel believe that the Chase Bank, Chemical Bank and Guaranty Trust are prepared to sell for \$3,000,000 their claim against USEPCO which is secured by that company's holdings of Standard Power & Light shares. He proposes to offer them \$1,000,000 and thinks they might compromise at between \$1,500,000 and \$2,000,000. He proposes:

(a) A three party joint account for this transaction between himself, Leadenhall Securities and Hydro Electric. Having acquired the claim, he would foreclose and take title to the Standard Power & Light stock. He would then call a meeting of directors and principal stockholders of USEPCO and inform them that the shares of USEPCO were valueless, but he proposed to offer pro rata to each shareholder of USEPCO the right to buy from our syndicate all the Standard Power & Light shares, less a small number of commission shares, for the sum which we had paid for them. These Standard Power & Light shares are about 70% of the company and before making the offer to USEPCO shareholders, he would want the directors to confirm that our syndicate acquired the benefit of the existing contract allotting 75% of Standard Gas financing to the present finance group. Our syndicate would then be left with such shares of Standard Power & Light as USEPCO shareholders would not take up, and the right to 75% of Standard Gas financing.

The next step would be to confirm with the Byllesbys that their management contracts with Standard Gas were secure, and obtain their cooperation in liquidating Standard Power & Light, shareholders of which would receive their due proportion of Standard Gas & Electric shares, thereby turning our syndicate's investment into marketable securities.

(Handwritten:) RW 12/18/35.

(Handwritten at bottom of first page:) Confidential.

EXHIBIT No. 1950

[Cable from Robin Wilson to Adsead, London. From the Files of Schroder Rockefeller & Co., Inc.]

From Department.

Date 12/19/35.

Send the following Cable and Charge:

Account: Chg. London.

Expense Addressee

Authorized: RW.

To ADSEAD,

17 John Street, Adelphi, London.

Mailed you Deutschland Emanuel's proposal for Hydro Leadenhall Emanuel acquire Usepco's holdings Standard Power & Light shares plus right to 75% of Standard Gas System financing for \$1,500,000 stop Negotiations moving faster than expected and would appreciate your opinion on following three points

Firstly. Could Hydro take prompt action on definite proposal

Secondly. Would an official proposal of the plan at this juncture prejudice or improve Schroder's position with Hydro

Thirdly. Reference two would you prefer preliminary plan submitted immediately or more definite plan next week or later stop

Going country with Emanuel today so please cable Beal direct

ROBIN.

EXHIBIT No. 1951

[From the Files of Schroder Rockefeller & Co., Inc.]

[Original]

CABLEGRAM :

From SCHRODPRIV.

J. HENRY SCHRODER & Co.,

London.

Date sent 12/19/35.

Date rec'd 12/19/35. 791L.

For Mr. Beal

Robin's wire Usepco think preferable await definite plan stop
 Following Fishers death Hydro board require certain time consider general
 future policy while Schroder also need carefully consider policy such close
 association Standard Power situation stop

Hydro Leadenhall would rely mainly Emanuel placing power make standard
 finance justify investment stop

Do you think we can make it

NEIL

(Stamped on margin with check mark after it:)

Investment.

EXHIBIT No. 1952-1

[From the Files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder & Co., London, to J. Henry Schroder Banking Corp., New York]

[Original]

Date sent 12/20/35.

Date rec'd 12/20/35. 833HS

CABLEGRAM :

From SCHRODPRIV.

J. HENRY SCHRODER & Co.,

London.

No. 89

With reference to USEPCO deal stop

As Standard Power and Light Corp shares have no value whatever please
 cable your ideas of possible value 75% financing Standard Gas System as we
 believe this would be dearly bought for \$1,500,000 in view of precarious position
 of company and political situation.

(Stamped in margin with check mark before them:) Senior officer, Investment.

EXHIBIT No. 1952-2

[From the Files of Schroder Rockefeller & Co., Inc.]

MEMORANDUM

STANDARD GAS & ELECTRIC CO.—INFORMATION OBTAINED BY ROBIN WILSON FROM VICTOR EMANUEL

U. S. ELECTRIC POWER CORP.

Capitalization :

Bank debt (Chase, Guaranty & Chemical).....	\$12,000,000
Approximate principal plus \$1,750,000 unpaid interest....	\$13,750,000
Preferred	20,000 shs.
Common	8,580,720 shs.

	Current Market Price	Approximate Value
Holdings:		
1,226,298 shs. Standard Power & Light common		
12,798 shs. Standard Power & Light common Series "B"		
1,239,096 Total shares.....	2 3/4	\$3,097,740
Miscellaneous securities.....		60,000
No cash.....		
		3,157,740

PREFERRED DIVIDENDS IN ARREARS AMOUNT TO \$2,820,000

STANDARD POWER & LIGHT

Capitalization:

No bank loans or funded debt.....	
7% cumulative Preferred stock.....	34,000 shs.
Common and common Series "B".....	1,760,000 shs.

	Current Market Price	Approximate Value
Holdings:		
1,160,000 shs. Standard Gas & Electric common.....	5½	\$6,380,000
40,700 shs. Standard Gas & Electric 7% Prior Preference.....	26	1,058,200
\$430,000 approximate par amount Standard Gas & Electric 6s-1935.....	67	288,000
Other securities of subsidiaries (approximately only).....		350,000
Cash.....		800,000
Total.....		\$8,876,200

To Dissolve Standard Power & Light.

1. Adjudication of \$24,000,000 Standard Power & Light bonds.
2. Eliminate 34,000 Preferred shares—
 - (a) Offer share for share exchange, including holders who have already accepted present offer.
 - (b) Withdraw exchange offer and employ salesmen to effect exchange. This would involve registration with the S. E. C. which is temporarily impossible.
 - (c) Pay off at par.
3. Make a deal with Byllesby who controls Standard Power & Light Series "B" stock, which elects majority of Standard Gas & Electric Board and minority of Standard Power & Light Board. Both companies require 75% agreement of directors to dissolve, mortgage, consolidate, reorganize, buy or sell securities or properties, finance or refinance, approve construction or budgets, declare bond interest and preferred dividends.

Financing in Near Future.

Sure Refunding:

1. *Oklahoma Gas & Electric*—\$35,000,000 to \$40,000,000 of financing. Bonds will be first mortgage 4s.
2. *Louisville Gas & Electric*—\$25,000,000 first mortgage 3½s.
3. *Northern States Power of Minnesota*—\$20,000,000 of bonds, and \$20,000,000 of Del. Preferred (*subject to change*).
4. *California-Oregon Power*—\$10,000,000 to \$13,500,000 first mortgage 3¾s or 4s.
5. Afterwards—*Mountain States Power* is to be sold to *California-Oregon* or both *Mountain States Power* and *Southern Colorado* to be sold later to *California-Oregon*.

(Total of above in addition to No. 4 will be approximately \$114,000,000 and more.)

Possible New Financing:

1. \$10,000,000 *Duquesne Light* (minimum)
2. \$7,500,000 *Northern States Power* (minimum)
3. \$1,500,000 *Wisconsin Public Service*
4. *Louisville Gas*, *Oklahoma Gas*, *San Diego Consolidated Gas* and all others would need indefinite amounts.

BAC.SH

12/24/35

(Handwritten:) 700—totals over years.

Standard Gas Refunding—All issues now outstanding of subsidiaries mentioned by Victor Emanuel for refunding

OKLAHOMA GAS & ELECTRIC CO.

Amount		Price	Yield	Call Price
\$798,000	Oklahoma Power Holding Co. 1st S. F. 5½s—1943.....	102½—none	4.8%	102½.
\$34,500,000	Oklahoma Gas & El. Co. 1st 6s—1950.....	105.....	4.5	103.
\$7,217,000	Oklahoma Gas & El. Co. deb. 6s—1940.....	104.....	5.0	102.
\$42,515,000				

LOUISVILLE GAS & ELECTRIC CO.

\$1,009,000	Louisville Lighting Co. 1st 5s—1953.....	114—none	3.7%	N. C.
\$20,805,000	Louisville Gas & El. 1st & ref. 5s—1952.....	111½.....	4.1	110.
\$6,000,000	Louisville Gas & El. 1st & ref. 4½s—1961.....	107½.....	4.0	105.
\$27,814,000				

NORTHERN STATES POWER CO. (MINN.)

\$4,999,000	St. Paul Gas Lt. Co. gen'l. 5s—1944.....	113½—none	3.2%	N. C.
\$1,500,000	St. Paul Gas Lt. Co. gen'l. & ref. 6s—1952.....	110—none	5.1	110.
\$26,546,000	Northern States Pr. Co. (Minn.) 1st 6s "A" 1941.....	105¾.....	3.8	105 to Apr. '36, 102½ after.
\$7,490,000	Northern States Pr. Co. (Minn.) 1st 6s "B" 1941.....	106¼.....	4.6	Do.
\$45,000,000	Northern States Pr. Co. (Minn.) ref. 4½s—1961.....	105½.....	4.1	105.
\$10,000,000	Northern States Pr. Co. (Minn.) ref. 5s—1964.....	108-108¾.....	4.5	107½.
\$7,500,000	Northern States Pr. Co. (Minn.) 5½ notes 1940.....	103.....	4.7	102.
\$78,000,000	Preferred issues outstanding, all held by Northern States Pr. (Delaware).			
\$38,961,000	The Delaware Co. has outstanding the following issues:			
\$39,026,000	Northern States Pr. Co. (Del.) cum. preferred 7%.....	80-81.....	8.7	110.
	Northern States Pr. Co. (Del.) cum. preferred 6%.....	71-72.....	8.4	107½.

CALIFORNIA-OREGON POWER CO.

\$4,081,000	California-Oregon Pr. 1st & ref. 6s "B" 1942.....	103½.....	5.3%	103.
\$2,437,000	California-Oregon Power 1st & ref. 5½s—1955.....	103½.....	5.2	102.
\$4,000,000	California-Oregon Power ref. 6½s—1942.....	105½.....	5.4	102.
\$7,000,000	California-Oregon Power deb. 5½s—1942.....	92½.....	7.0	101½.
\$17,518,000				

MOUNTAIN STATES POWER CO.

\$1,341,000	Mountain States Pr. 1st & ref. 5s—1938.....	92¾.....	9.0%	102½.
\$6,841,000	Mountain States Pr. 1st & ref. 6s—1938.....	95-96.....	8.3	102½.
\$440,000	Mountain States Pr. 6% conv. gold notes due November, 1935.....	-----		100.

¹ Of which \$3,000,000 owned by Standard Gas & Electric Co.

R.W.SH
12/24/35

EXHIBIT No. 1953

[From the Files of Schroder Rockefeller & Co., Inc.]

DECEMBER 26, 1935.

Re: U. S. Electric.

Mr. JOHN L. SIMPSON,
17 Boulevard Haussmann, Paris, France.

DEAR JOHN: Jerry and I have just spent four hours with Robin and Victor Emanuel on this situation, and Robin has departed for the boat, escorted by Victor. He is extremely keen on the situation we have been discussing and will be having long talks in London about it as well as with you upon your

return there, so that we thought you would like to have our own slant on the whole matter.

PROPOSAL

Emanuel proposes that we pay the banks \$1,500,000 for their claim against Usepco. He will put up one-third of the money, Hydro is to be asked for one-third, and Robin hopes to line up other British interests for the rest. Robin originally had in mind Leadenhall for the other third, but now the plan is for Schrobancro and Leadenhall to go joint account in assuming any loss on the part of the British underwriters over 50%; i. e., a maximum of \$500,000. It would be expected that the 75% of the Standard Gas system financing now controlled by the Usepco group would go 50% to Emanuel and 50% to Schrobancro, the latter contributing one-half of its net earnings therefrom to Leadenhall.

Upon acquisition of the banks' claims, the group would offer Usepco's holdings of Standard Power & Light to Usepco stockholders pro rata (the guess is that not over 50% would be taken up by Usepco stockholders, of whom the chief is Hydro.)

STRATEGY

Jerry has emphasized with Robin that the latter's chief object upon his return should be to convince Hydro and other prospective underwriters that the Standard Power & Light stock securing the bank loans is an attractive gamble at the present time, leaving the question of the financing well in the background in order that it may not appear that the scheme is designed to use other people's money for acquiring a position in the financing.

In New York, Emanuel has already sounded out the Chase Bank, who have been holding out for a \$3,000,000 price for the claims but have come down to \$2,000,000 so far. There is said to be possible competition in the offing, but a more immediate reason for some speed is that published figures of Standard Gas system so far have shown no upturn in net, whereas those to come out soon will begin to show a turn, which might influence the banks' ideas regarding the value of their own claims.

There are obviously two lines of major interest in this situation: the value of the security as a gamble, which is of greater interest to the prospective London participants; and the value of the prospective financing, which is of greater interest to the American parties to the deal. Let us look at each of them.

ATTRACTIVENESS OF PRICE AT WHICH STANDARD GAS COMMON IS TO BE ACQUIRED

Enclosed memoranda show the inter-corporate relationships and the assets of the various companies. (Robin Wilson is taking with him even more detailed memoranda just received from Emanuel.)

We can summarize by stating that the group's \$1,500,000 would be equivalent to about 70¢ per share of Standard Gas & Electric common if the Standard Power & Light preferred can be eliminated by exchanging the holdings of Standard Gas preferred in its portfolio; if that is not possible and all the miscellaneous portfolio and cash has to be used to retire the Standard Power & Light preferred, then the Standard Gas & Electric common would cost the group \$1.85 per share. As a guess, call the net cost \$1.25 per share. This compares with the current market price around \$6.00, at which price it has an activity of around 14,000 shares a week, so that conceivably the stock could be marketed if the group decided to liquidate.

Since Standard Power & Light's major asset is Standard Gas & Electric common, and since the former would probably be dissolved, the status of the latter is of paramount importance.

(a) *Receivership*.—A 77b action has been proceeding since the October 1st default, but the conditions of this receivership seem unusually lenient, with the Management left as sole Trustees, 70% of the maturing bonds now in the hands of the Committee representing the Management, and the opposing Protective Committees not too obstreperous. On the information Emanuel produces, it would not seem unlikely that the Company could be brought out of receivership in the near future.

(b) *Earnings*.—The Standard Gas system has been one of the last to show an upturn in *net* because a severe rate cut in Pittsburgh last Spring, together with tax increases, has offset improving gross. Recently figures, as yet unpublished, seem to show that the trend has changed, and it has been the experience with such pyramided set-ups that a change in trend brings a very rapid appreciation in all security prices.

In short, the gamble in Standard Gas & Electric stock would seem to be taken at a favorable point in the earnings trend, and at a price well below what the market currently sets as a valuation of future prospects.

FUTURE FINANCING

Since Jerry has written you separately regarding our prospects for doing underwriting, we'll simply assume here that we shall find a way to take advantage of such a situation as we are discussing. Once the group has acquired the claims from the banks, there will undoubtedly be terrifically bitter negotiations with the present Usepco group over the future division of financing. The idea is not to exclude them from it, but to swap with them participation in some of their financing. The plan is to leave the Byllesby management and interest in the situation undisturbed.

Emanuel calculates that the system should do \$175,000,000 of financing in 1936. (It is hoped that the S. E. C. will not refuse to register the securities of an operating company, even though the holding company may not have registered under the Utilities Act.) He further figures that the system normally needs a minimum of \$100,000,000 new financing per year.

The net which Schrobanco could realize from such a picture is, of course a guess, but, figuring an average spread of $2\frac{1}{2}$ points on the business, of which $1\frac{1}{4}$ would go to distributors and $\frac{1}{4}$ to expenses, there would be left one point, out of which $\frac{1}{4}$ would go to Byllesby, leaving $\frac{3}{4}$ to be split between Emanuel and Schrobanco. That would make Schrobanco's gross $\frac{3}{8}$, or \$652,500 on the prospective financing of \$175,000,000, leaving \$326,250 net after Leadenhall's half interest.

OUR POINT OF VIEW

We are not carried away by all these big figures, nor by Emanuel's eloquence, nor by Robin's enthusiasm. We are, however, definitely impressed by the possibility of getting into the middle of a very large picture with good gambling possibilities, on the basis of a moderate contingent commitment.

Is this prospective commitment really moderate? We certainly would not undertake such a contingent guarantee if it amounted to a million dollars maximum if the situation proves entirely worthless, and we should definitely prefer it to be only \$100,000. Nevertheless, a \$250,000 maximum commitment, especially when it begins to operate only after a 50% decline in the relatively low cost of acquisition, does not seem to us out of line with the possibilities in the situation. (These possibilities, of course, include deposits and fiscal agencies from the Standard Gas System and perhaps an underwriting commission in the form of Standard Power & Light shares at the time they are offered to Usepco shareholders.)

We have fully in mind, of course, the political pressure on utilities, the fact that Standard Gas may not get out of receivership as soon as Emanuel expects, the possibility that the banks may decide not to sell their claims at a sufficiently low price, the difficulties of making arrangements with the present Usepco group, the stickiness of some Standard Gas securities even if we control the financing, etc., etc. Nevertheless, we think there is a chance to make a good play here without any heavy commitment, and we hope that Robin will be able to produce some sort of bid from Hydro and others to be presented to the banks.

Very truly yours,

CARLTON P. FULLER.

CPF/JS
Encl.

EXHIBIT No. 1954-1

[From the files of Schroder Rockefeller & Co., Inc.]

JANUARY 10, 1936.

Mr. JOHN L. SIMPSON,
145 Leadenhall Street, London, E. C. 3, England.

Re: Usepco:

DEAR JOHN: Following your telephone call from Paris, with its news of the elimination of our rôle as guarantor, and therefore possibly of any rôle at all, we have been giving the subject a lot of thought. I should say *renewed* thought,

because we are spending about half the time on the telephone with Victor Emanuel these days. In order to give you time to be mulling over the drift of our ideas, we cabled you to Berlin in accordance with the attached copy.

We decided not to get all hot and bothered about Pam's and Robin's neglect of Schrobancos interests, and not to try a major appeal to London to bring them into line. While it is obviously an occasion when Pam and Robin got carried away by the idea of doing a big business all by themselves and forgot about the general Schroder interests, we think we can get farther in the long run by sticking to our knitting without any major explosion.

Now just what is our knitting. Primarily we want to represent the Schroder-Hydro interest in this market, just as we would have long ago except for Fisher. If we can achieve that position, the rest ought to follow in due course, the rest being a position of responsibility in the councils of the companies involved, a share in the financing, and deposit and fiscal agency business.

It seems to us axiomatic that someone will have to spend a great deal of time on this situation on behalf of London interests, since it is one of the most complicated and Americanized situations in financial history. It is conceivable that Pam will want to exercise the rôle of Fisher, and that he will use Robin to come over frequently and transact Usepco business direct with other American parties. It is also conceivable that either one or both of them might use Emanuel as their American confidante.

We think, however, that we can become indispensable to them in the long run even though they may start off on the foregoing tack to begin with. During this initial tack, let us make every effort to prevent commitments' being made by Robin or anyone else.

(A) As for the financing, we should think we might eventually work out an arrangement to take over a certain portion of the London 47½% at some kind of step-up, say one-quarter. We know, for instance, that Byllesby frequently finds 25% too large a commitment for their purposes, so that they cede some to the other members of the group at an advance of one-quarter. Or, if we can establish our position sufficiently with the London group, it is conceivable that they might request us (B) to handle the entire arrangement of financing for their group, allocating them a certain percentage of the profits derived therefrom. It is obviously going to be very difficult for them to swap quid pro quo with other underwriting houses in this market unless they have someone on the spot to do it for them. We are sure they haven't any idea of the difficulties involved in that connection, but they will have a very concrete idea once the dog fights are on.

Emanuel, for example, told Robin that he doubted whether we could get more than 50% reciprocity from the members of the present group, because they have an established position in this picture, we will need them for distribution, etc. Emanuel is counting heavily on Schrobanco to back him up in these squabbles because, as he says, he and we have to live with these people in New York, while it is easy for the London people to sit back and take an arbitrary attitude. He is most anxious that the London interests give him and us leeway in making these reciprocal arrangements, not just sit back and demand a hundred percent monetary quid pro quo.

While we can easily see putting up \$100,000 in the syndicate to achieve a position, we would be just as happy to have one of the foregoing A) arrangements eventuate, because we don't think that the mere fact that London acquired their underwriting position by putting up the money means that the underwriting profits are going to flow to them as naturally as interest comes in from a bond. It is going to take a great deal of laborious working out, and during that process we ought to be able to work out our own position. Moreover, if we put up, say as much as \$250,000, that would tend to freeze our participation in the emoluments at that ratio to the whole sum, which may or may not prove desirable. Perhaps we are rationalizing, but we are not too disturbed about being left out of the monetary contributions.

As for the bank accounts and fiscal agencies, you know how lucrative and important they can be. Moreover, they should be noncompetitive as far as London and Emanuel go.

In short, we are inclined to follow a policy of boring from within and not crashing the gate. We think it is most opportune that you should be there during the discussion. We would like definitely to get our representatives on the Boards of Holding and Hydro and Northeastern as soon as possible in order to help establish our position, even though we recognize that the

whole background indicates slow haste in this respect. We were frankly disappointed in Pam's apathetic attitude on this subject in his letter to Beal, because we think it is important to establish our foothold as early as possible. Recognizing the difficulties, we think it would be worth making a real drive before you leave.

After the above discussion of philosophy, you may be interested to learn that Victor Emanuel is all in a sweat about how to proceed next in this situation after receiving approval of the \$2,000,000 bid limit. The promptness of the action on the \$2,000,000 really staggered him a bit and made him wonder if Robin had fully disclosed all the obstacles in the situation, such as the possibility of a long lock-up before Standard Power & Light stock can be reduced to possession on account of delays in registration of the stock; or the other possibility that Usepco stockholders may take up Standard Power & Light stock and leave our group with only Hydro's 25% participation in hand, whereas real control of the financing depends on a 51% voting control of the Standard Power Board, which could then be obtained only through proxy solicitation, etc., etc. Emanuel (still believing that the London group will do all its underwriting in this situation through us as soon as we have set up a new vehicle) is trying definitely to tie Schrobano into all these problems so that London will not place the entire blame on his shoulders if a fiasco results.

It is really a frightfully complicated situation, and both he and we are trying to avoid a denouement in which we would have lost the business and at the same time have antagonized all the present financial group. Equally, we wish to proceed so that our bid can't be used to raise that of some competitor. There is also the problem of possibly getting together with Harrison Williams.

All of which may lead you to conclude with us that the deal is far from done; but there is some money in hand now, and before the time this reaches you, another stage will probably have developed.

Since writing the above, more gyrations have occurred, and Emanuel has decided not to talk to the Chase today but sit down with us tomorrow to plan the campaign once more. Allen Dulles has called up to tell us a little more openly than previously that Harrison Williams is interested in the picture, so the kettle is boiling merrily, and probably Victor will approach the Chase on Monday.

Meantime Victor has showed us the cable which he received from London and which we relayed to you in Berlin, stating in effect that the London group had not made up its mind as to how to handle its share of the financing, but that it was inclined to utilize Schrobano if we could arrange the proper set-up. We were delighted to see this unsolicited indication to an outside party, and thought that it rather confirmed our policy as outlined in this letter, but you will have further evidence on that point before many days go by after your return to London.

Very truly yours,

CARLTON P. FULLER.

CPF/JS.

EXHIBIT No. 1954-2

[Western Union]

Charge to the account of EMANUEL & CO. 32 Broadway

JANUARY 8, 1936.

SCHRODER,

London (England)

For Major Pam and Robin Wilson. With reference today's telephone conversation very much appreciated your prompt advice and all that you have done stop. One part conversation not clear having to do with division financing stop. Had understood that on million one half cost basis where Hydro and our respective firms were contributing one third each financing divided equally between our firm and yours as told Robin if we had to go to two million cost had hoped same ratio would stand even though amount to be contributed by my firm not increased stop. As understand situation now you propose original equal division financing between our firms would hold if deal can be done at one and half million cost but that if consideration has to be increased to two million my firm's interest would be reduced to 27½ percent with English part

47½ percent balance remaining Byllesby as at present is this correct stop Of course as previously explained it impossible avoid participation in particular pieces System financing by houses long identified in business with local houses in territories served which however never major amount which situation understood by your office here from their previous experience in Systems financing stop As explained negotiations with other houses which are part of American group now in business would have to be conducted delicately and one hundred per cent reciprocation might not be possible or advisable but in mentioning percentages presume you did so on gross basis with idea that any necessary give-ups be done ratably between us stop. Matter will have to be proceeded with cautiously due number of factors and as first step seeing Seagrave tomorrow who leaves tomorrow night for ten day absence after which will consult Beall and Fuller here before proceeding further stop As previously advised price rises give me considerable concern but you may be sure will do very best I can.

EMANUEL

EXHIBIT No. 1955

[From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corp., New York, to J. Henry Schroder & Co., London]

From: INVESTMENT Department

Date: 1/14/36

Send the following Cable and Charge: Expense Addressee

Account: 54

To: SCHRODPRIV, London.

Authorized: CPF

USEPCO

Emanuel made tentative approach Chase and had favorable reception but finds active competition from Harrison Williams through Guaranty and others stop We have confirmed this from other sources stop

We all then decided support of USEPCO Financing Group should be enlisted at this stage stop

Emanuel indicated they must be prepared put in cash and/or reciprocal financing if they wished retain position in Standard Financing stop

Initial reaction favorable and substantial cash will probably be forthcoming as well as good start on later reciprocal financing arrangements stop

If business can be done for two million dollars Emanuel assumes you would be willing if necessary to allocate up to five hundred thousand to that group leaving total London participation at one million dollars and total American one million including Emanuel for minimum \$250,000 stop

If business requires more than two million dollars would you be willing USEPCO Group's contribution should be added to purchase price in attempt to close deal stop

Endeavoring make best speed possible but negotiations delicate and may be protracted view competition stop

Emanuel consulting us constantly but assume you do not wish daily detailed reports

EXHIBIT No. 1956

[From the Files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder & Co., London, to J. Henry Schroder Banking Corp., New York]

[Original]

CABLEGRAM

Schrodpriv

From J. HENRY SCHROEDER & Co.,

London

Date sent 1/15/36

Date rec'd 1/15/36 615HS

No. 106 Your 37

Hydro Schroder group agree they will take participation of between \$1,000,000 and 1,500,000 in purchase provided total cost does not exceed \$2,500,000 and provided their proportion not less than 50% of total stop

While approving Emanuel tactics we wish to be kept informed important negotiations and also to know what percentage financial benefits will accrue to our group direct and reciprocal

Our 37 read . . . Usepco Emanuel made tentative approach Chase and had favorable reception but finds active competition from Harrison Williams through Guaranty and other stop etc.

(Hand written) : Copy to Mr. Emanuel

(Stamped on margin with check mark before it:) Investment

EXHIBIT No. 1957

[From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder & Co., London, to J. Henry Schroder Banking Corp., New York]

[Original]

CABLEGRAM

From SCHRODPRIV

J. HENRY SCHROEDER & Co.

London

Date sent 2/14/36

Date rec'd 2/15/36 579N

No. 135

To help us form opinion as to advisability for Hydro and other clients participating in Usepco loan acquisition should Emanuel make suitable proposal, please enlighten us on value of share in future refinancing Standard Gas subsidiaries. stop

Emanuel has repeatedly said that this financing probably more valuable than prospects of appreciation of Standard Power stock so we want assurance that new syndicate will really thus acquire valuable asset stop

Please discuss with Emanuel and cable how this asset could in your opinion be valorised stop

Is there no danger that present First Boston syndicate could insist on right to future financing without compensation to us stop

Even if syndicate could acquire right to 75% future financing what benefit could there be to Hydro and others here who are not American issuing house stop

Please cable fully to enable us explain situation in detail to our friends

(Hand written:) Copy to Mr. Emanuel

EXHIBIT No. 1958

[From the files of Schroder Rockefeller & Co., Inc. Letter from Victor Emanuel to C. P. Fuller]

MEMBERS

NEW YORK STOCK EXCHANGE

NEW YORK CURR EXCHANGE

COMMODITY EXCHANGE, INC.

Telephone JOHN 4-1400

Cable Address EMANSTOCK

EMANUEL & Co.

Fifty Pine Street New York

FEBRUARY 17, 1936.

C. P. FULLER, Esq.,

Vice President, J. Henry Schroder Banking Corporation,

46 William Street, New York City.

DEAR CARL: I have now had a chance to read your draft of the cable to London in reply to their cable to you of the 14th, received by you on the 15th. I believe the cable is all right, except for the following suggestions:

1.-That a satisfactory arrangement be worked out as to how you handle the agreed percentage of any profits to be paid the London group, but I presume you have talked to *Alan Dulles*¹ about this.

(Handwritten:) Call up.

2.-Generally, in Standard Gas financing, the expenses are paid by the companies, except such small items as mailing. They do pay for all attorney and auditing fees, printing, and things of that sort, although this might not be important enough for you to change your cablegram.

3.-Where you comment at the bottom of the first page on trading selling group positions for underwritings in other situations, you might change this to read

¹ Underscored in ink.

"it might also trade selling group positions for underwriting or selling group positions in other situations".

(Handwritten:) No.

4.-In place of the second paragraph on page 2 of your cable, I would have the following to say: Some members of the so-called First Boston Syndicate now in the business would come along in the new deal at varying amounts, but as to First Boston itself, it would not have any legal or any other kind of position that would entitle them to stay in the business unless the group desired it, and as to the basis if the group did desire it, this would be subject to negotiation. They understand this situation, and normally, as you know, if anyone outside bought these loans, the entire present group would be out of the business, and they would have no legal or other means to hold to their position. In other words, there is no basis on which the First Boston Corporation, or anyone of the present group except Byllesby, could insist on the right to any future financing without compensation.

5.-The last statement in your cable is very conservative, as to Standard Gas financing, as all in all the underwriting group profit averages more than 1 point, which is the amount you have stated.

I do not know whether you want to say that the present USEPCO position of 75%, as a base for financing, is not covered by a legal agreement but by a memorandum, but that Byllesbys have verbally agreed with me, and will, I am certain, before we consummate a deal, agree to continue the memorandum to the new group, and that with this assurance, plus the position our stock would give us, there is no question in my¹ mind that our group could inherit the position the present group now has. This, of course, does not change what you have said as to valorizing this for the London group who might not want to participate direct in the financing. (Handwritten:) By our (feeling) I mean, of course, the present Usepco group as would not expect you to pass upon this.

On receipt of this would appreciate your telephoning me, as there are a few other things I would like to discuss with you.

With kind regards, I am

Yours very truly,

(Initialed:) V. E.

VE W

EXHIBIT No. 1959

[From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corp., New York, to J. Henry Schroder & Co., London]

From INVESTMENT Department

Date: 2/18/36

Send the following Cable and Charge: Expense

Addressee Account:

To SCHRODRIV

Authorized CPF

London

(Handwritten:) (overnight).

Your 135

We ourselves believe London group should rely mostly on attraction of high leverage stock in recovery period with proceeds from financing as additional speculative attraction stop

Nevertheless latter source profits has definite potentialities even though considerable bargaining involved in realizing them stop

Assuming London group would not care underwrite and possibly take up large amount of each Stangas issue our idea would be they appoint central agent in New York such as J. Henry Schroder Inc. to handle their position stop

You understand selling group commissions are on account of actual distributing services and what we must attempt analyze for you is underwriting group commission which might be one point out of total two and one-half point spread if selling group were one and one-half stop

In large issues any central agent would presumably wish take only reasonable participation say 10% or 15% and would try to trade excess for participations in other financing stop

¹ Word "our" stricken through and word "my" written above.

It might also trade selling group positions for underwriting in other situations stop

This whole bargaining process most difficult and London interests should not expect 100% quid pro quo in all cases as some underwriting must attach to selling group participations of large distributors stop

As basis estimating possible profits Emanuel guesses \$175,000,000 Stangas system financing this year and normally \$100,000,000 per annum stop. Taking latter figure and assuming 1% underwriting spread there would be \$1,000,000 annual gross underwriting profits or \$750,000 for Usepco Group stop

If London group has half interest in deal they and Central Agent would be entitled to \$375,000 out of above stop

20% or thereabouts of all these underwriting profits might have to be used in connection with distribution but central agent would endeavor obtain corresponding positions in other financing groups in order offset give-ups to large distributors stop

Therefore Emanuel's estimate total financing would seem indicate annual profits available for division between London group and central agent of about \$300,000 to \$375,000 stop

Foregoing does not deal with legal situation reference retaining 75% of Stangas financing for which see our and Emanuel's cables to Pam Paris January 7th stop

Regarding present first Boston Syndicate we and Emanuel feel situation can be handled and they already appreciate necessity for changes

EXHIBIT No. 1960

[From the files of Schroder Rockefeller & Co., Inc.]

[Original]

CABLEGRAM

Date sent 2/20/36

Date rec'd 2/20/36 S19HS

SCHRODRIV

From J. HENRY SCHRODER & Co.,

London.

For Mr. Beal

No. 139

Reference telephone conversation stop

Participation by Hydro largely dependent on their receiving adequate share in financing profits stop

Owing their suspicion of Schrobanco we feel that we cannot propose that they should receive percentage of Schroder Inc. underwriting profits because they would imagine that some further profits were being withheld stop

Think it essential that Londons share underwriting profits be derived direct through participation in underwriting by Leadenhall Securities or some other such company or new American company formed both to buy London share Usepco loans and underwrite new issues

(Stamped on margin with check mark before and initialed after:) Senior Officer

EXHIBIT No. 1961-1

[From the files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder Banking Corp., New York, to J. Henry Schroder & Co., London]

From INVESTMENT Department

Date 2/24/36

Send the following Cable and Charge: Expense

Addressee Account 54

To SCHRODRIV London.

Authorized CPF

Your 139

Believe can work out something along lines your last sentence stop Reference Leadenhall participation Sullivan & Cromwell state Leadenhall securities would probably be considered affiliate of Schrotrust because of same indirect ownership and Leadenhall thus disqualified for appearing as underwriter here stop

Believe your last suggestion also eliminated because new company would involve substantial new capital requisite for taking underwriting risks stop

Believe therefore best of your three suggested methods is quote some other

such company unquote and suggest for your consideration Conti-Trust of which we assume stock control not in your own hands stop

Conti-Trust would then appear in prospectus and receive underwriting profits which it could distribute amongst London group as it wished stop

Whether it would have to report such distributions in the prospectus is subject of controversy with some precedent both for and against stop Question of publicity not clear as to recipients of finding commission who do not take underwriting risk stop

Just how important do you consider non-disclosure stop

Conti-Trust and others of group are of course subject American income tax these profits stop

Conti-Trust could allocate certain amount underwriting to a New York agent in return for which latter would do all necessary work connection Conti-Trust's underwriting Stangas and other situations as well as trade off excess Stangas underwriting for other positions

EXHIBIT No. 1961-2

[From the Files of Schroder Rockefeller & Co., Inc.]

148, LEADENHALL ST., E. C. 3, 27th March, 1936.

DEAR VICTOR, Thank you very much for your long and interesting letter of March 18th concerning Bobbie Loewenstein. He is back in England, although I have not seen him yet, but presume I shall shortly. Thank you for the nice things you said about me, although it sounds as if I shall have to work hard to live up to them!

As far as I know I shall be coming over to New York at the end of April or the beginning of May, and am very much looking forward to seeing you again.

The USEPCO deal seems to have gone completely to sleep for the moment, but I gather from Carl Fuller that you are being kept pretty well informed of the intentions of our competitors. If by any chance the deal does come off I feel that it will be a good thing for me to be in New York to represent our group in the negotiations over our share of underwriting.

As regards NORTH EASTERN WATER, I have not gone into the situation at all fully myself, but Simpson has gone on the Board to represent us, and I expect I will have a full report for me when I come over. So far as I can see the investment looks like turning out a very satisfactory one, as the Company is showing quite a nice increase in income.

Regarding FINANCE TRUST & AGENCY, you were asked to fill in a proxy because under the Articles of Association only shareholders can vote at meetings. I went to see Van der Straten about it, and have arranged to give him your proxy under my Power of Attorney, and he will vote at the meeting on 1st April (at which I shall be present) in accordance with my instructions.

There is no question of either your position or mine being prejudiced on account of the attitude we have taken up, and they quite understood that, as I was representing a shareholder on the other side of the Atlantic, it was quite right that I should attend the meeting on your behalf.

The whole group has done very little business since Fisher's death, and once Finance Trust is wound up the Group's security business will be concentrated with us.

Incidentally, I have already made some changes in Hydro's portfolio, and have passed orders for the bulk of them to you, including the purchase of some PACIFIC GAS and LOUISVILLE GAS.

Naturally we are only too glad to receive suggestions from you at any time for:

(a) Utility investments for HYDRO,

(b) High-yielding bonds or Preference shares for all the companies, but particularly for HYDRO, which has to keep an eye on its Preference dividend requirements, and

(c) Any American shares in which you think we can make some money.

Yours ever,

(Sgd) ROBIN.

VICTOR EMANUEL, Esq.,
50 Pine Street, New York.

EXHIBIT No. 1962

[From the Files of Schroder Rockefeller & Co., Inc.]

[Original]

CABLEGRAM

SCHRODPRIV

From J. HENRY SCHRODER & Co.

London

Date sent 5/22/36

Date rec'd 5/22/36 89SAS

For Mr. Wilson
No. 257 Your 216

Presumably difficulty/ies/ you mention are disclosure/s/ in prospectus of sub underwriters which you want to avoid Stop

Are there any others Stop

Before discussing details must remind you Hydro always have been promised participation in financing profits in same proportion as their commitments less of course special advantage/s/ given to leaders of group and others brought in for individual issues Stop

Further that such special advantages would be subject to bargaining so that groups would be recompensed for what they gave away by receiving participation in non Standard Gas & Electric Co. issues Stop

Would remind you also of Hydro's distrust & suspicion Stop To enable us form some judgment please cable.

Firstly. What is usual underwriting commission & specifically in Wisconsin underwriting.

Secondly. How much are American group members taking in Wisconsin issue.

Thirdly. Was 2,500,000 all you could get for English group Stop

We understand English group will be sub underwriter/s/ of this amount unless some other satisfactory arrangements concluded for instance as suggested at the end of this cable.

Fourthly. Have you arranged any quid pro quo with First Boston in return for all owing them to lead this issue.

Paragraph. We could certainly arrange with Hydro and others to accept less than theoretical percentage if all risk avoided although we understood underwriting and even selling syndicate now practically without any risk owing to new issue conditions but drop from point 375 to point one seems impossible to explain and we fear great difficulties Stop

As Usepco financing is real basis for constituting Schroder, Inc., would it not be better to offer English group 75% of Schroder, Inc's. profits derived from any source whatever Stop

This would avoid all possible arguments about subsidiary profits derived from compensation non Standard Gas & Electric Co. issues and be proposal we could press with every likelihood success.

Our 216 read. Reference my letter to Pam have had long discussions with Schrobanco and Sullivan and Cromwell on difficulties of London group participating in Usepco financing Stop etc

(Handwritten:) Copy in Wilson folder.

(Handwritten:) Mr. Wilson.

EXHIBIT No. 1963

[From the files of Schroder Rockefeller & Co., Inc. Cable from Robin Wilson to J. Henry Schroder & Co., London]

From INVESTMENT Department

Send the following Cable and Charge: Expense Addressee

To SCHRODPRIV.

London

Date 5/25/36

Account 12

Authorized CPF

Your 257

Hydro being utility holding company precluded direct underwriting and I always warned them not expect to derive same profits from underwriting as American participants but told them they might hope to get five or six percent return on their investment stop This estimate was based on 37½ percent on ¾ percent net underwriting profit on \$100,000,000 financing equals \$280,000 stop

If half this retained by our group \$140,000 equalled seven percent on \$2,000,000 contemplated investment stop

One per mille would equal $6\frac{1}{2}$ percent on \$1,550,000 European participation and while obviously open discussion and later revision if it appears unfair to either side am definitely convinced

Alpha. That greatest proportion our claims to financing profits can be realized via Schroder Inc

Beta. More satisfactory relate our commission to volume Standard Gas financing than to Schroder Inc net profits as think latter might arouse much discussion and bad feeling stop

Am very doubtful whether any American underwriting house could realize point three seven five even though they work hard and assume risks stop Considerations to remember are

One. Part financing always reserved local and other houses recommended by issuing company

Two. Part our underwriting must be ceded to distributors especially in difficult issues stop

Very difficult for foreign underwriter like Leadenhall enforce reciprocity and Schroder Inc would have hard work to protect our interests

Three. There still is risk on underwriting because underwriting group must take commitment few hours before registration statement effective and selling group cannot be legally bound until registration effective

WILSON.

(Handwritten:) Copy of Wilson Folder.

EXHIBIT No. 1964

[From the files of Schroder Rockefeller & Co., Inc.]

[Letter head of]

J. HENRY SCHRODER & Co.

In your reply please quote Investment Department

145 LEADENHALL STREET,
LONDON, E. C. 3, 24th August, 1936.

MESSRS. SCHRODER ROCKEFELLER & Co. INC.,
48 Wall Street, New York.

DEAR SIRS, Following our various conversations in London, this is to confirm our understanding as follows:—

We understand that you are taking over from J. Henry Schroder Banking Corporation their interest in the amount of \$200,000 in the purchase of notes of United States Electric Power Corporation secured largely by Common Stock of Standard Power & Light Corporation. We and certain British and Canadian interests for whom we are acting in this matter, have acquired an interest of \$1,550,000 in the above purchase. For convenience we shall hereafter refer to the above-mentioned British and Canadian interests as the "London interests."

As a result of this acquisition the London interests might hereafter be in a position to have a part in the financing of the so-called Standard Gas System through participation in the purchase, sale and syndication of securities issued by companies in this System. However, the undersigned, as Agent for the London interests duly authorised thereto, hereby agree that the London interests will not engage in such financial operations in the United States, and will use their best efforts to the end that Schroder Rockefeller & Co. Incorporated, shall enjoy all their interests in such financing, the present agreement being for the period and subject to the terms and conditions herein set forth:—

(1) You shall pay to us at our office in London as the Agent for the London interests, in consideration for this agreement \$26,350 and hereafter and as long as this agreement shall be in force and effect, .125% of the total principal amount of securities covered by financing of the so-called Standard Gas System

(less your proportionate interest therein; namely, $\frac{200,000}{\$1,750,000}$ of said .125%, resulting in a payment of .1107%). Such payments shall be made only with respect to financing of the Standard Gas System in which, in view of the London interests' and your relation to this situation as above indicated, you might

have participated if you had desired to do so, and such payments shall be made even though you shall elect not to participate in such financing. Such payments shall be subject to proportional reduction in the case of any such financing where the underwriters' commission is less than one percent.

(2) We shall take no part, directly or indirectly, in the underwriting or disposition of the securities which you may underwrite, or any other activities in the United States in connection therewith, nor assume any responsibility, liability or commitment in connection therewith, it being understood that you shall be solely liable with respect to the total amount of your underwriting commitments without any recourse against us or any of the "London interests."

(3) This agreement and any rights, interests or obligations thereunder, shall be subject to termination at any time upon one month's prior written notice by you or by us.

Yours faithfully,

J. HENRY SCHRODER & Co.

Confirmed: SCHRODER ROCKEFELLER & Co. INCORPORATED

By: J. H. SCHRODER, *Authorized Agent.*

NRA/MC

EXHIBIT No. 1005

[From the Files of Schroder Rockefeller & Co., Inc.]

MEMORANDUM (HANDWRITTEN:) R. W.

On May 20, 1936 J. Henry Schroder Banking Corporation, Bancamerica-Blair Corporation, W. C. Langley & Co., A. C. Allyn & Co., Inc. and Emanuel & Company purchased from the Chase National Bank of the City of New York, Guaranty Trust Company of New York and Chemical Bank and Trust Company, \$12,500,000 Notes of the United States Electric Power Corporation, secured by

- 1,226,298 shares Standard Power & Light Corporation Common Stock
- 12,798 shares Standard Power & Light Corporation Common Stock Series B
- 2,400 shares Northern States Power Company Common Stock Class A
- 4,000 shares National Shareholders Corporation Cumulative Convertible Preference Stock
- 8,200 shares General Investment Corporation Common Stock
- 191,600 warrants Associated Gas & Electric Co.
- 12,100 warrants General Investment Corp.

for a cash consideration of \$3,500,000, of which J. Henry Schroder Banking Corporation's interest is 50%, Bancamerica-Blair Corporation's interest is 25% and the other three firms mentioned have a total of 25%.

Bancamerica-Blair Corporation agreed to make available their interest in the Notes or collateral securing the Notes (for a period of 90 days after the consummation of the purchase and the acquisition of the Notes, at cost plus expenses) for an offering to the shareholders of the United States Electric Power Corporation. Inasmuch as the acquisition will be completed on June 1, 1936, the 90-day period expires on August 31, 1936.

United States Electric Power Corporation had an agreement with H. M. Byllesby & Co. which gave them a first call on 75% of the financing of the Standard Gas & Electric System. H. M. Byllesby & Co. agreed to continue this financing arrangement with the new group which purchased the Notes of the United States Electric Power Corporation, secured by Standard Power & Light Common Stock, from the three New York banks. The purchasers of the Notes agreed that their interest in this finance contract should be on the same percentage basis as their interest in the purchase of United States Electric Power Notes.¹ It was also agreed that inasmuch as Bancamerica-Blair Corporation had the largest American interest in the contract, they should have leadership in any future financing, but that Bancamerica-Blair's attitude would have to be flexible to the extent of recognizing public service commissions, the wishes of the operating company's management or anything for the good of the company on this question of leadership; also, if Schroder went into the investment business in this country, the purchase group should then give them consideration ahead of

¹(Handwritten in margin:) Recognizing that Schroder's interest obviously makes from the general point of view leaders of the group.

Bancamerica-Blair Corporation on the question of leadership. It was agreed by J. Henry Schroder Banking Corporation that if they gave up any of their position in the underwriting the other members of the purchase group should have first call on such position,¹ and that any offering of their position to outsiders would have to be made² [through] the house heading the business.³

It was also understood that Bancamerica-Blair Corporation would have the opportunity of being represented on the Board of Directors of the Standard Power & Light Corporation, the Standard Gas & Electric Co. and subsidiary companies on which any bankers in the purchase group are represented.

E. G. DIFENBACH.

MAY 28, 1936.

D. Ts.

EXHIBIT No. 1966

[From the Files of Schroder Rockefeller & Co., Inc. Cable from J. Henry Schroder & Co., London, to J. Henry Schroder Banking Corp., New York]

[Original]

CABLEGRAM

From

SCHRODPRIV

J. HENRY SCHRODER & Co.

London

Date sent 1/6/36

Date rec'd. 1/6/36 133N

No. 95.

Please arrange with Victor Emanuel joint consultation with Sullivan & Cromwell and enquire whether they foresee any serious legal difficulties in our USEPCO programme Stop

Special points

One. Foreclosure of loans to reduce Standard Power to possession.

Two. Offer by Victor Emanuel and Hydro of foreclosed stock to other USEPCO shareholders

Three. Standard gas 77B reorganisation

Four. Their guess about Public Utility Act and effect on Standard Gas

Five. Ultimate dissolution Standard Power

Six. Possibility any claim by holders of Standard Power debenture holders

Seven. Elimination Standard Power preferred by exchange and/or/ purchase

Eight. How binding a contract can be made assuring 75% future group financing to Emanuel and Hydro Stop

Please cable Pam Meurice Hotel Paris night letter your close January seventh

(Handwritten:) Copy to Mr. Emanuel. Also Mr. Dulles.

EXHIBIT No. 1967-1

[From the Files of Schroder Rockefeller & Co., Inc.]

[Western Union]

Charge to the account of EMANU & CO., 32 Broadway

JANUARY 6, 1936.

ROBIN WILSON

% Major Albert Pam

Hotel Meurice, Paris

Fuller communicated to me your cable sixth stop Difficulty arises in that Sullivan and Cromwell counsel for First Boston and Langley who for reasons you understand do not want know about this now stop Fuller having confidential talk with Dulles first this morning and if they see their way clear act confidential basis we will have joint meeting this afternoon stop Unfortunately market here very strong Standard common selling at seven three quarters seven dollar pre

¹ (Handwritten:) So far as the interests of the business allowed and on terms satisfactory to Schroder.

² (Handwritten:) Only to parties satisfactory to the group.

³ (Handwritten:) but illegible.

ferred, twenty nine one eighth and am concerned as to how this might affect basis for deal. Regards.

EMANUEL.

EXHIBIT No. 1967-2

Date: 1/7/36

Account: 14

Authorized: CPF

From INVESTMENT Department
Send the following Cable and Charge: Expense Addressee
To MAJOR ALBERT PAM,
Hotel Meurice, Paris.

[Night letter]

Your schrodpriv 95

Sullivan & Cromwell have following comments your particular inquiries Quote As you realize this whole situation extremely complicated and precise answers would require very detailed study and in some cases view uncertainty situation could not be given in any event but following may be helpful Stop

One. Purchaser could foreclose loans and reduce Standard Power stock to possession but purchaser other than USEPCO might thereby lose certain non-transferable collateral veto powers which USEPCO as owner stock possesses Stop

Possibly this situation could be covered through prior arrangement Byllesby but complete answer would require extended research

Two. No legal objection to offer foreclosed stock by Hydro and Emanuel to shareholders USEPCO but this would presumably require registration Securities Act and consideration under Utilities Act parenthesis Emanuel considers registration easy since form already filed for Standard Gas debentures parentheses

Three. [Hearing on Standard Gas 77b Reorganization Plan adjourned yesterday for month Stop]

Impossible predict whether 77b plan can be put through prior determination status Utilities Act

Four. We are of opinion that Title I Utilities Act which applies to holding companies is unconstitutional and believe Supreme Court on basis cases already decided will so hold Stop

Five, six, and seven. We believe debenture holders still have some claim against Standard Power even though debentures assumed by Standard Gas stop Therefore dissolution Standard Power would be extremely difficult but situation might be met by merger of Standard Power and Standard Gas or by Standard Gas offering exchange its own securities both for assumed debentures and for Standard Power preferred unquote

Eight. They consider contractual control of financing unfeasible and undesirable but agree with Emanuel that real source of control would be Hydro's holdings and the majority on the directorate plus an agreement and good relations with Byllesby paragraph

Due to strong utilities market Standard Power & Light Portfolio has increased in value over \$3,000,000 since figures given Wilson and common stock now quoted \$4¼ instead of \$2 which emphasizes Emanuel's cabled suggestion of \$2,000,000 limit in dealing with banks

NOTE.—Matter in black brackets is stricken through; matter in italics is handwritten.

EXHIBIT No. 1968

[From the Files of Schroder Rockefeller & Co., Inc.]

MEMORANDUM

3/10/36

To: Messrs. Beal and Simpson

From: Mr. Fuller

Re: Mr. Crispell's Comments on Byllesby-UsepcO Agreement.

Mr. Crispell was very cautious and reserved because he has commitments to so many interests in this situation and he would not discuss the terms of the agreements at all without clearing with all his principals, who include others besides Victor Emanuel. I told him if it became necessary to get an official opinion from Sullivan & Cromwell, we might later approach him to get a clearance, but for the time being our telephone conversation would suffice.

He says that the two gentlemen's agreements are not legally binding, as we already understand, but that they have worked perfectly and will continue to do so as long as they are between people who have confidence in each other and who wish to play ball. In general such agreements have been difficult to enforce, although he can conceive of such an agreement's being made and being enforced if based upon a definite long-term program of specific financing. However, since the latter would involve the question of price which obviously can not be set long in advance, as a practical matter it is difficult to see how such a contract could actually be drawn up in practice.

The charter and by-law provisions of Standard Power and Standard Gas are presumably legal documents, which would stand regardless of the position of U. S. Electric, but some outside lawyers have questioned even that situation.

CPF/JS

EXHIBIT No. 1969

[From the Files of Schroder Rockefeller & Co., Inc. Memorandum by C. P. Fuller]

BYLLESBY-USEPCO AGREEMENTS

Upon the formation of U. S. Electric Power Corporation, three agreements were entered into between H. M. Byllesby & Co. and Usepco, copies of which were in Mr. Fisher's possession. Only one of these is considered a legally enforceable, signed contract, under which Byllesby gives Usepco an option on its holdings of Standard Power & Light stock in case Byllesby wishes to sell. It includes a provision that if Usepco declines at the price offered, and Byllesby sells elsewhere, then Byllesby will execute an irrevocable proxy for the shares to Usepco.

The other two documents are merely gentlemen's agreements with no binding force in law, which was understood at the time of their negotiation. The one called the "Dividend Agreement" is signed by the parties and obligates them to confer on dividend policy, awards 50% of the system's bank deposits and all fiscal agency functions to Usepco's nominees, covers publicity, public relations, etc.

The other, called the "Financial Agreement", is merely initialed. It is this agreement which divides the financing 75% to Usepco and 25% to Byllesby, with certain other provisions.

While arrangements as to Standard Gas financing are thus not on a legally enforceable basis, they have worked without difficulty since 1929 and are similar to many other such arrangements, all of which operate as long as the parties thereto are reliable.

While Sullivan & Cromwell have not rendered an official opinion on the validity of these agreements (such an opinion would probably follow the above lines), they agree that they have worked effectively during their existence.

There is some dispute as to whether the agreements would become the property of any successor to Usepco in the event of the latter's dissolution, but there seems some weight of authority indicating that they would not, and therefore an agreement with Byllesby is an important consideration in any negotiations regarding the future of Standard Gas financing. Mr. Emanuel claims to have a thorough understanding with Byllesby.

Obviously no deal should be completed until undertakings covering the financing are completed in form satisfactory to all parties. Such undertakings can probably not be set up in legally binding form, but can be made on a workable basis as in the past.

CPF/JS

3/13/36

EXHIBIT No. 1970

[From the Files of Schroder Rockefeller & Co., Inc. Letter from J. L. Simpson to Frank Common]

Confidential

MARCH 13, 1936.

FRANK COMMON, Esq.,

Messrs. Brown, Montgomery & McMichael,

Royal Bank Building, Montreal, Canada.

DEAR FRANK: During the conversation Jerry and I had with you the evening you were here, you raised three points particularly regarding the Usepco deal:

1) The legality of the contractual arrangements with Byllesby.

We have gone into this question carefully, both with Sullivan & Cromwell and Victor Emanuel, and Carl Fuller has prepared a memorandum as of today's date

which sets forth the position. It confirms your view that the financial agreement is not legally binding. On the other hand Victor Emanuel feels strongly that the agreement has moral force, has in the past been adhered to, and is playing a role in the present negotiations. By this last I mean that he states that all parties concerned, including Byllesby, Harrison Williams and the banks, recognize the force of the Byllesby-Usepcos financial agreement. He contends that everybody feels Usepcos position in this respect is strong enough so that account must be taken of it, and that Byllesby have taken this attitude with all parties concerned.

You will note that copies of the three agreements are reported to be in Hydro's possession (or among Fisher's effects). Through Emanuel we have obtained access to these agreements on a strictly confidential basis. As this has only happened today, we have not had time to make a thorough scrutiny of the provisions, but shall do so promptly and if we discover anything to amend or amplify the present information we shall of course advise you.

In any event, Carl's memorandum summarizes a number of detailed conversations with Crispell of Sullivan & Cromwell and Victor Emanuel, and I believe it answers your question.

2) The possibility of an outside utility opinion regarding the business merits of the proposed deal.

Jerry and Carl and I have discussed this matter at very considerable length. We recognize thoroughly the merit of your view as to the desirability of obtaining all the backing possible to any recommendation which may be made to the Hydro Board. However, it is really difficult to see just how the point can be met satisfactorily. If one went to a financial house, such as the name you mentioned, their interest in dealing with the matter could surely be obtained only by giving them a major position. That would presumably be irreconcilable with the retention of a sufficient interest by the present Usepcos group, including Hydro.

We have considered utility operators such as Stone & Webster, for instance. Two objections present themselves. Anybody of substance has financial connections and bringing any such party into the picture would almost certainly lead to further complications. Furthermore the elements of uncertainty in the deal are to such a large extent political, legal and financial that there is a great question as to the value of outside utility advice. As a matter of fact, Langley is really quite a prominent figure in the American utility business, and while Victor Emanuel does not represent any powerful interest, he is undoubtedly an able and experienced man.

Of course if we should end by forming some combination with Harrison Williams, there is no doubt that his views regarding the property values would be of great interest.

If you have any further thoughts on this phase of the matter, I hope you will communicate them freely. It is certainly a very important question and your fundamental point of view is one with which we here completely sympathize. We too would like to have something to back up any views which we may ultimately formulate and express; but the problem seems to be as outlined above.

(3) The relations between Hydro and the other members of the Usepcos group.

Your point was that the contemplated transaction should represent an entirely new deal, and that any rights and benefits should be distributed among the members of the group in proportion to the new financial commitments undertaken, regardless of any precedents created in the past.

There is no question in our minds that you are 100% right in this position. We have had it in mind all along, and I think Victor Emanuel quite accepts that point of view. However, I am glad you re-emphasized it, and you need have no doubt that that is the position which we shall maintain if and when the negotiations come to a head.

The present situation is that both Harrison Williams and Heinemann are negotiating with the banks and Byllesby. Victor Emanuel apparently is informed of everything which goes on in both quarters. He tells us that both Williams and Heinemann recognize that if they do succeed in working out anything, they will have to deal with the Usepcos group. In the meantime Standard Power & Light common was quoted today at $2\frac{3}{4}$ - $3\frac{1}{4}$, and Standard Gas & Electric common closed at $7\frac{1}{8}$ - $7\frac{1}{4}$. It may be that Victor will still have an opportunity to engineer his own deal with the banks. If that should happen, we shall all have to decide what to do about putting it up to Hydro.

I think that gives you a summary of the situation to date and shall not fail to let you know of any developments of importance.

With very best regards,

Sincerely,

P. S. Regarding Grace and Northeastern, we wired London asking them whether Hydro has any general interest in increasing its holdings of Northeastern common or preferred. Grace was in today, and Carl Fuller and I had a chat with him. We told him that if there is any interest in the situation we shall certainly consider the possibility of dealing with him. He is of course quite a small dealer, but quite knowledgeable and may be of use.

Enclosure.

JLS/T

EXHIBIT No. 1971

[From the Files of Schroder Rockefeller & Co., Inc.]

MAY 18, 1928.

MEMORANDUM RE—STANDARD GAS AND ELECTRIC COMPANY, AMERICAN WATER WORKS AND ELECTRIC COMPANY, INC., MIDDLE WEST UTILITIES COMPANY (Combined with NATIONAL ELECTRIC POWER COMPANY)

Statistical information

	Gross earnings	Balance sheet resources
Standard Gas & Electric Co.....	\$155,000,000	\$1,100,000,000
American Water Works & Electric Co., Inc.....	50,000,000	400,000,000
Middle West Utilities Co.....	130,000,000	900,000,000
National Electric Power Co.} Combined.....		
Totals.....	\$335,000,000	\$2,400,000,000

Earnings and dividends per shares

	Earnings per share	Dividends paid per share
Standard Gas & Electric Co.....	\$6.60	\$3.50.
American Water Works & Electric Co., Inc.....	4.00	1% in cash— 4% in stock.
Middle West Utilities Company.....	15.50	8.00.
Figures on earnings and dividends of Middle West Utilities Co. do not include earnings from National Electric Power Co. which, roughly estimated, should increase earnings per share and dividends paid per share to.....	18.00	10.50.

Financial and statistical

This situation would be the world's largest public utility company and also the world's largest corporation. There would be—

Electric consumers.....	2,444,923
Water ".....	453,088
Gas ".....	723,000
Hydro electric capacity in KW.....	480,600
Steam capacity in KW.....	2,398,000
Total capacity in KW.....	2,878,600
Annual KW hour output.....	8,828,010,000
Communities served.....	6,340
Population ".....	13,475,000

There is a great deal of additional statistical information that would be very interesting with regard to this situation, but which I have not attempted to

compile in the short time available. At a later date I will furnish the following figures:

Steam heating consumers
 Telephone subscribers
 Railway passengers carried
 Ice production and distribution
 Capacity of ice storage
 Oil production and distribution
 Capacity of oil storage
 Miles of track
 Number of cars
 Daily capacity of artificial gas plants
 Open flow capacity of natural gas fields
 Miles of gas mains
 Capacity of gas holders
 Miles of high tension transmission line
 Miles of distribution line
 Capacity of water pumping plants
 Other general statistics.

Estimated cost of controls

Standard Gas & Electric Company—	\$30,000,000
(represented by—	
1,000,000 shares \$1 6% non-cumulative preferred stock	
200,000 " common stock)	
Middle West Utilities Company—	52,500,000
(represented by—	
292,000 shares common stock. This would mean an average	
cost per share of \$179.80)	
American Water Works & Electric Co., Inc.—	54,480,000
(represented by—	
681,000 shares common stock at \$80 per share)	
	<hr/>
	\$136,980,000

Income to be received on the basis of the acquisition of the above controls

	<i>Per annum</i>
Standard Gas & Electric Company—	
1,000,000 shares 6% preferred stock—	60,000
200,000 shares common stock at \$3.50—	700,000
Middle West Utilities Company—	
292,000 shares common stock at \$10.50—	3,066,000
American Water Works & Electric Co., Inc.—	
681,000 shares common stock at \$2.50—	1,702,500
(This stock is now paying 1% per annum in cash and 4% per annum in stock. I have given effect to the elimination of the stock dividend and payment of \$2.50 in cash dividend which I think is conservative)	
Standard Gas & Electric Company—	
Management earnings—1% of gross—	1,550,000
Engineering " —1½% of construction—	975,000
Middle West Utilities Company—	
Management earnings—1% of gross—	1,300,000
Engineering " —1½% of construction—	750,000
American Water Works & Electric Co., Inc.—	
Management earnings—2% of gross—	1,000,000
Engineering " —5% of construction—	1,500,000
One per cent of total amount par value of securities issued per annum—estimated (conservatively)—	2,000,000
Interest in undistributed earnings—	
Standard Gas & Electric Company—	620,000
Middle West Utilities Company—	2,190,000
American Water Works & Electric Co., Inc.—	1,021,500
Proportion of immediate savings in combined operation that would inure to above stockholders—	3,500,000
	<hr/>
Total amount income to new holding company—	\$21,935,000

In explanation of certain of the above items of income, I would make the following comment:

Management and engineering earnings would not necessarily be so termed. These earnings would have to come from the respective holding companies we purchase, and not from their operating properties—except possibly in the case of the American Water Works and Electric Company, Inc.

The one per cent income on the total par value of securities issued per annum would be paid into a new holding company, probably by the bankers themselves.

The \$3,500,000 that would inure to the new company due to savings in operating is a most conservative figure. It would take a long time and a most careful study to estimate the total amount of savings that could be made under one combined operation of these three large holding companies, but to give only a rough idea of the possibilities the following can be considered:

The American Water Works & Electric Company, Inc. and the National Electric Power Company maintain large central operating and management offices in New York City, while the Middle West Utilities Company and the Standard Gas & Electric Company have similar organizations in Chicago. These four very large organizations would be combined into one new organization with a tremendous saving, not only in salaries, but in rent and all other items that go into the cost of large central offices.

From my knowledge of the situations, I would say that the minimum amount we could save would be \$5,000,000 per annum. As another example, the properties of these companies are contiguous in many localities. Dozens of operating offices could be merged, probably into five large groups, which would lend itself to efficient and economical management. These groups would be in charge of the best men available and would mean the elimination of any number of separate operating organizations in the field. Also, they could take more power than they now enjoy, and management could be de-centralized to a large extent from home offices and put on the properties themselves, due to the fact that on the large situations that would result, each of the groups could maintain a sufficient staff headed by high calibre men. This should save at least \$5,000,000, which is a conservative figure.

There are literally so many savings to be made, that it would be very difficult to recount them all, but the savings in taxes, insurance, and all overhead charges would be enormous.

The combined purchasing power of this situation would insure cheaper purchases than ever, and more important than all, these properties lend themselves in great measure to inter-connection which would eliminate an untold amount of future construction requirements for power generation and reserve supplies. The Pennsylvania, Virginia, West Virginia, and Maryland situation alone would represent huge savings in interest charges, depreciation and maintenance per year, to say nothing of a far lower cost in the production of electricity.

There is not time for me now to go into the details of such savings, but anyone having even a remote knowledge of public utility operation can, with one look at a map showing the combined lay-out of these properties, understand what a tremendous amount these savings will mean. It is my belief that instead of a \$10,000,000 saving, this figure can easily be doubled.

The question may be asked here why more than \$3,500,000 of this \$10,000,000 saving does not inure to the new corporation. The reason is that the new company would own only one-sixth of the common stock of the Standard Gas & Electric Company, and fifty-one per cent of the stock of the Middle West Utilities Company and the American Water Works & Electric Company, Inc. The balance of \$6,500,000 would inure to the other stockholders in these three companies, and could only be earned in greater proportion by us if we increased our stock holdings in these three situations beyond the necessary control.

Financial situation

If the stocks of the three companies discussed in this memorandum could be purchased at the price estimated, our total cost would be about \$137,000,000. The income on this investment, as set forth above, would be about \$22,000,000 per annum. This would represent an *over-all return of sixteen per cent on the investment*. It is very important here to bring out the fact that it is *after* depreciation and all prior charges. This should be particularly noted.

A few days ago we discussed a rough plan of financing which provided that thirty five per cent of the amount needed should be raised in debentures of the new holding company, and twenty five per cent in preferred stock. From the figures I am giving you below, it is obviously not the right set-up.

If we wanted to raise thirty five per cent of the necessary amount in debentures, this would mean that it would be necessary for us to raise \$47,950,000. Assuming that five per cent debentures could be sold to the public at 96, for which the bankers would pay the company 94, this would require \$51,000,000 of debentures. The annual interest charges on these debentures would be \$2,550,000 and the interest charges would be earned 8.36 times *after all prior charges*. It is quite obvious that any such small amount of debentures would be foolish.

It might be stated here that a part of our earnings will be due to certain management and engineering charges and also to certain savings to be made. However, giving effect to having these controls and combining them in one new holding company, it would not be difficult to obtain an audit from certified public accountants giving earnings set-up as outlined above; this was done in the case of the National Electric Power Company and it has been done in many of the largest and most important companies in this country. The management and engineering fees are on the basis of contract and the savings could be shown as soon as the operating and management affairs were combined, so I know such a certificate could be obtained by giving effect to these two matters taking place.

We had planned to issue twenty-five per cent of the amount necessary in preferred stock. This would require the raising of \$34,250,000. Assuming that six per cent preferred stock would sell to the public at 97 and to the bankers at, say, 93, this would require \$36,825,000 of preferred stock on which the annual dividend requirements would be \$2,201,500. For this we would have available earnings of \$19,450,000 (which is the balance or earnings available after paying interest charges on the debentures). This amount, for the dividend charges, would be earned 8.85 times. Here again it is quite apparent that the amount of preferred stock we have assumed is far too low. In fact, the *combined interest and preferred stock dividend would be earned over 5 times*, and in this market it would not even be necessary for the combined charges to be earned twice.

It is quite apparent now that the entire purchase price could be financed in debenture bonds and preferred stock, if we were so minded. This is, of course, always providing that these combined controls could be purchased for \$137,000,000.

Two other plans present themselves to me, based upon a purchase price of \$137,000,000, which I am giving briefly below:

Sell \$75,000,000 debentures at 94, net to the company, (interest on these bonds would be earned 5.9 times)-----	\$70, 500, 000
Sell \$50,000,000 6% preferred stock at 93, net to the company (dividends on this stock would be earned 6 times)-----	46, 500, 000
TOTAL AMOUNT RAISED -----	\$117, 000, 000
Amount still to be raised-----	\$20, 000, 000
For this \$20,000,000 still to be raised, we would have available earnings after interest and dividend charges on the above securities of-----	\$15, 250, 000

which would represent a *return of 76¼% per annum* on the money to be raised.

It is quite obvious that anyone of a dozen plans could be used to raise this money. If, for instance, we issue 5,000,000 shares of common stock, the earnings available per share would be \$3.45 per annum. Common stocks of this character can readily be sold in the present market on a ten per cent accrued earnings basis, but even if we doubled this amount and sold this stock on the basis of twenty per cent accrued earnings available for dividends, we could then put a valuation on this stock of \$17.25 per share, and out of the 5,000,000 shares available we would have to sell only 1,160,000 shares at \$17.25 per share to raise the \$20,000,000 necessary—and this stock would show an accrued earning basis of twenty per cent per annum. This would leave us with the remaining 3,840,000 shares at no cost whatsoever and on which available earnings would be \$13,248,000 per annum.

As aforesaid, the entire amount necessary could be raised in bonds and preferred stock and we will have a good showing, but the facts in the matter are that we could afford, if necessary, to pay a great deal more than \$137,000,000 for these

controls, or, if necessary, we could forego making some of the charges above estimated.

It is far too early now, anyway, to make any financial plans, and I have only given these to show what could be done on the basis we have in mind.

There are two matters in this situation which are of the utmost importance. One is the legality of the issuance of the 1,000,000 shares of \$1 per share par value six per cent non-cumulative preferred stock of the Standard Gas and Electric Company. The second is, whether, if we desire, we can impose the management and engineering charges (or a combination of charges) on the Standard Gas and Electric Company and the Middle West Utilities Company situations, inasmuch as these holding companies are already making such charges to their operating subsidiaries. These charges, of course, would not be superimposed on the subsidiary companies, but on the holding companies and I cannot see how anyone could possibly complain unless perhaps it would be the minority stockholders of these companies. I do not feel that they would have any legal right to object, but this point would have to be studied carefully. In any event, with the savings that could be made through the operation of these situations combined as one, the earnings per share that would accrue to these stockholders would be far greater than the charges we impose, so that an actual improvement in their position should result. This problem does not present itself in the case of the American Water Works and Electric Company, Inc.

Notwithstanding the fact that the entire transaction might be financed out for \$137,000,000, provided we could purchase the controls above outlined, I agree with Captain Loewenstein that it would be good policy for us to have some amount of actual cash in the equity.

Nowhere in this memorandum have I discussed the many advantages that would inure to the bankers in this situation. I have thought this was too apparent to make any comment; it is sufficient to say, however, that they would be assured of an immense amount of prime public utility securities each year that would be purchased from friendly hands, and that their position in the situation would be even more attractive than that of the operators.

EXHIBIT No. 1972

[Letter from S. W. Dubig, Shell Union Oil Corporation, to Investment Banking Section, Monopoly Study, Securities & Exchange Commission]

SHELL UNION OIL CORPORATION,
50 West 50th Street, New York, January 4, 1940.

STIPULATION

Mr. PETER NEHEMKIS, Jr.

*Securities and Exchange Commission,
Washington, D. C.*

DEAR MR. NEHEMKIS: It is hereby stipulated and agreed that the documents listed on the attached sheet are true copies of original communications or memoranda or carbon copies thereof in the files of Shell Union Oil Corporation and that they were received, sent or written, as the case may be, by an officer of Shell Union Oil Corporation. The cablegrams referred to in which code addresses and signatures were employed were sent to or received from certain directors of Shell Union Oil Corporation who were at the time resident in London.

Yours very truly,

S. W. DUBIG,
Vice President and Treasurer.

SWD—S
Encl.

	Date	Description	From—	To—
1	6/7/35	Letter	J. C. van Eck	F. Godber.
2	7/22/35	Letter	S. Belthier	J. C. van Eck.
3	8/14/35	Cable	Condeteck	Deterding, London.
4	10/14/35	Cable	Deterding, London	van Eck.
5	7/29/35	Cable	Deterding, London	Shell.
6	11/1/35	Cable	Condeteck	Deterding.
7	12/16/35	Letter	Dillon Read & Co.	Shell Union Oil Corp.
8	12/18/35	Letter	Lee Higginson Corp. and Hayden Stone & Co.	Shell Union Oil Corp.
9	1/4/36	Cable	Deterding, London.	Condeteck.
10	1/18/36	Cable	Shell	Condeteck, London.
11	1/22/36	Cable	Condeteck	Deterding, London.
12	2/10/36	Memo ¹	(1)	
13	8/6/36	Telegram	van der Woude	F. Godber.
14	8/6/36	Telegram	F. Godber	R. G. van der Woude.
15	3/11/36	Telegram	J. W. Watson.	S. W. Duhig.
16	3/11/36	Telegram	van Eck	F. Godber.
17	4/3/36	Letter	J. C. van Eck	G. Legh-Jones.
18	1/20/37	Cable	R. G. van der Woude.	Vanwood, London.
19	2/4/37	Letter	R. G. van der Woude.	J. C. van Eck.
20	3/5/37	Cable	R. G. van der Woude.	Vanwood, London.
21	8/16/37	Memo	S. W. Duhig	
22	3/16/37	Cable	R. G. van der Woude.	Vanwood, London.
23	3/17/37	Cable	R. G. van der Woude.	Vanwood, London.
24	1/18/38	Letter	J. C. van Eck	R. G. van der Woude.
25	4/13/38	Letter	R. G. van der Woude.	J. C. van Eck.
26	4/22/38	Memo	S. W. Duhig	
27	4/30/38	Cable	R. G. van der Woude.	Vanwood, London.
28	6/1/38	Letter	R. G. van der Woude.	A. Fraser.
29	5/23/39	Letter	S. W. Duhig	R. G. van der Woude.
30	5/24/39	Letter	S. W. Duhig	R. G. van der Woude.
31	6/6/39	Cable	R. G. van der Woude.	Vanwood, London.
32	1/4/39	Cable	R. G. van der Woude.	Vanwood, London.
33	1/5/39	Cable	Shellwood, London.	R. G. van der Woude.
34	6/26/39	Cable	R. G. van der Woude.	Vanwood, London.
35	7/13/39	Cable	R. G. van der Woude.	Vanwood, London.
36	7/17/39	Telegram	R. G. van der Woude.	S. Belthier.
37	7/20/39	Cable	R. G. van der Woude.	Vanwood, London.

¹ Headed Shell Union Group—unsigned.

EXHIBIT No. 1973

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORPORATION,

50 West 50th Street, New York, 7th June, 1935.

Private & Confidential

F. Godber, Esq.

St. Helens Court, Leadenhall Street, London, E. C. 3, England.

Dear Mr. Godber:—

SHELL UNION FUNDS

Referring to my letter of May 29th, our banking friends (Hayden, Stone and Lee, Higginson) advise me that they think they could raise up to \$60,000,000 at the terms mentioned in my letter of the 29th.

As regards the warrants, they think these should contain an option to purchase 30 Shell Union Shares at \$15 per share for three years and at \$17.50 per share for another three years.

(Handwritten on margin:) A. C. Allyn & Co., 20 Exchange Place.

It may also interest you that I have been approached by a banking syndicate consisting of Lehman Bros., Speyer & Co. and the firm of Solomon Bros. & Hutsler,¹ who are very anxious to make us a bid. At the proper time I think they would be prepared to make an offer, which of course should be confidential and not to be disclosed to any competitive bankers, at a fixed price with their right to cancel at a penalty of say \$100,000, if not prepared to go forward with the deal. As you know, all bankers at the present time are very hesitant to make definite commitments as to price at the time the deal is negotiated, and only wish to be definitely bound some three or four days before the issue is possible after

¹ Name is circled.

having received the approval of the Securities Exchange Commission. If, in that case, the market has gone down and the bankers would not think it possible to proceed with the deal, the syndicate I spoke of are prepared to pay a forfeiture.

Yours very truly,

J. C. VAN ECK.

JCV E: AB

EXHIBIT No. 1974

[Source: Moody's Manual. Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

PUBLIC OFFERINGS OF SHELL UNION SECURITIES PRIOR TO 1935

1. In April 1927, a public offering of \$50,000,000 Shell Union Oil Corporation 20 year 5% Sinking Fund Gold Debentures due May 1, 1947, was underwritten by Lee Higginson and Company of Boston and Higginson and Company of London.

2. In June 1929, a public offering of \$40,000,000 Shell Union Oil Corporation Cumulative Convertible Preferred Stock was underwritten by Lee Higginson and Company, Guaranty Company, National City Company, Hayden Stone and Company, Dominick and Dominick, and Clark Dodge and Company.

3. In September 1929, a public offering of \$50,000,000 Shell Pipeline Corporation Sinking Fund Gold Debentures, due October 1, 1949, was underwritten by the same six firms. This company is a subsidiary of Shell Union and these debentures were guaranteed by Shell Union.

EXHIBIT No. 1975

[From the files of Shell Union Oil Corporation]

S. BELITHER,

100 Bush Street, San Francisco, Calif., 22nd July, 1935.

MY DEAR MR. VAN ECK: I had a talk with Mr. van der Woude this morning and he tells me there is nothing new in regard to the refinancing. I understand Mr. van der Woude has continued the discussions in New York with Dillon Reade but they are not yet in a position to make any offer.

You have, no doubt, noticed in the morning paper that Mr. Ames, of the Texas Company, passed away yesterday—apparently of heart failure.

I wish you and Mrs. van Eck and family a very pleasant trip, and I am looking forward to seeing you in New York on Friday.

Yours very sincerely,

Mr. J C. VAN ECK,

Sacramento.

S. BELITHER.

Italic indicate handwriting.

EXHIBIT No. 1976

[From the files of Shell Union Oil Corporation]

[Copy of message]

Sent 6 p. m., August 14th., 1935.

To Deterding, London.

By Condeteck.

625

BRK
New York 8230

Your [492] 95 Dillon Read's best proposal under present conditions bond market is \$50,000,000 4 percent debentures to be issued to public at 101½ with 2½ percent commission to bankers returning to company therefore 99 making money cost us approximately 4.10 percent Stop

Bonds callable first few years at 105 thereafter graduating scale and warrants attached to bonds entitling owner purchase 25 Shell Union shares at around 17 for 10 years or possibly 5 years if conditions bond market at time of issue would justify Stop

There would be no commitment on part of bankers or on our side and final price to be determined soon as registration with Securities Exchange Commission has been completed and 3 days before issue date

Messrs. Van Eck, Duhig, Fraser.

Black brackets indicate stricken through figures and italic hand written figures.

EXHIBIT No. 1977

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORP.

50 West Fiftieth Street, New York

[Copy of message received]

Time sent: October 14, 1935.

Time received: October 14, 1935.

Addressed to: Vaneck NYC.

From Deterding, London.

Lazarban Paris have asked me introduce to you their partner *Pierre Davia Weill* before he leaves New York Eighteenth October who would like see you with view possible future financial transactions (Stop) He will also present to you *Stanley Russell* president Lazard New York

DETERDING.

EXHIBIT No. 1978

[From the files of Shell Union Oil Corporation]

[Copy of message received am 29th July 1935]

From Deterding, London.

To [Condeteck] *Shednd.*

Filed: 350 PM

A R: 8404

29th July 1935

NEW YORK

CONFIDENTIAL

[#492] 95

Your #97. We entirely agree every possible avenue must be investigated but anxious not to appear in any great hurry as we are satisfied with time our side full stop

We suggest better allow Dillon, Read and Company make their offer and if not satisfactory at first which we fully expect then to consider Lehman Brothers and if necessary syndicate of all three full stop

Remind you on no account will we accept less than period 25 years and may desire increase the amount so as to not only provide for refund present loan but also new money say another 15 20 million dollars

Attention Mr. van Eck, c/c Messrs. Duhig, Fraser.

NOTE.—Black brackets indicate stricken through matter and italics handwritten matter.

EXHIBIT No. 1979

[From the files of Shell Union Oil Corporation]

[Copy of message sent]

To Deterding, London.

By Condeteck.

4 PM 1st November, 1935.

A R. 10842

CONFIDENTIAL.

NEW YORK

#644

Dillon Read propose following alternatives all referring to \$50,000,000 issue 3½% coupon:

First. 10 year bond nett to S. U. 98 callable at 102 no sinking fund

Second. 15 year nett to S. U. 95 callable between 103 and 104 sinking fund \$1,000,000 to \$1,500,000 a year stop However if we agree to sinking fund \$2,000,000 a year nett to S. U. to be raised to 96

Third. 20 year bond with warrants attached entitling bearer to buy 20 shares common at \$15. For period 5 years nett to S. U. 97½ callable between 104 and 105 sinking fund \$1,000,000 a year stop

All call prices graduating downwards over a period of issue full stop If indicated terms acceptable as basis for further negotiations would recommend we give other banker friends opportunity to indicate their terms stop

Bankers whom we think should be given opportunity are:

First. Lee Higginson and Hayden Stone

Second. Lehman Bros.

Third. Lazard Freres stop

What is your opinion

MESSRS. VANECK, VANDERWOULDE.

EXHIBIT No. 1980

[From the files of Shell Union Oil Corporation]

DILLON, READ & Co.

Nassau & Cedar Streets

NEW YORK, Dec. 16th, 1935.

SHELL UNION OIL CORPORATION,

50 West 50th Street, New York City.

DEAR SIR: You have informed us that you are preparing a registration statement and a prospectus for an issue of \$50,000,000 3½% Fifteen-Year Debentures of your Company to refund your outstanding Twenty-Year Sinking Fund Debentures due May 1, 1947 and to provide additional working capital.

The new Debentures are to be entitled to the benefit of a cash sinking fund of \$1,000,000 for the first year, the amount of such sinking fund to increase by \$100,000 for each year thereafter until it reaches the amount of \$1,500,000 per annum. The sinking fund money is to be used to purchase Debentures if obtainable at or below the principal amount and accrued interest, unexpended balances to revert to your Company.

The call price of the new Debentures is to be 102½% of the principal amount plus accrued interest for the first five years of their life, decreasing by ½ of 1% during each two-year period thereafter until the call price reaches the principal amount of the Debentures.

We understand that you are prepared to sell the issue at a price of 97% of the principal amount, plus accrued interest. This price does not take into consideration the expenses to be borne by your Company in connection with the financing including the fees and disbursements of counsel and other experts and travelling, telephone, telegraph and other similar out-of-pocket expenses (except selling expenses) of the underwriters.

We have informed you that we are ready to proceed with our investigation in the belief that we will be able, together with the other members of an underwriting group to be formed, of which we would be the Managers, to purchase this issue at the price mentioned above subject to the following conditions:

1. That upon completion of our investigation of your Company and its business we are satisfied to proceed with the financing.

2. That a contract between the several members of the underwriting group and your Company be entered into a few days prior to the effective date of the registration statement, containing terms and provisions satisfactory to your Company and to us including, among others, provisions for the approval of legal matters by our counsel, the registration of the new Debentures under the Securities Act of 1933, as amended, and the existence of market conditions satisfactory to us at the time of purchase.

3. That the indenture under which the new Debentures are to be issued shall be in form and substance satisfactory to us.

It is understood that this letter is not to be construed as a commitment, either legal or moral, on our part or on the part of your Company.

Very truly yours,

DILLON, READ & Co.

EXHIBIT No. 1981

[From the files of Shell Union Oil Corporation]

DECEMBER 18, 1935.

SHELL UNION OIL CORPORATION.

50 West 50th Street, New York, N. Y.

(Attention of Mr. J. C. van Eck.)

DEAR SIR: It is our understanding that the Shell Union Oil Corporation is willing to issue approximately \$50,000,000 Shell Union Oil Corporation 15-year $3\frac{1}{4}\%$ Debentures at a price of about 97½ or better net to the Company.

As soon as the market in the judgment of ourselves and associated firms has reached the point where we believe that an issue can be successfully made at a price to warrant our bidding approximately the terms mentioned above, we shall be glad to communicate with you at once.

If we and our associates are selected by the Company as underwriters of the proposed issue, we would wish to have Paul Payne, Esq., Los Angeles, Cal., Consulting Engineer, make a report for us on your property.

Very truly yours,

HAYDEN, STONE & COMPANY
By F. E. GERNON
LEE HIGGINSON CORPORATION
By E. N. JESSUP, Vice President

EXHIBIT No. 1982

[From the files of Shell Union Oil Corporation]

[Copy of message received]

14TH JANUARY, 1936

From Deterding, London.
To Condeteck.

Filed 13th
AR New York 506

Confidential
#9

Your #654 is Lazard Freres proposal submitted on their own behalf or on behalf Dillon Reads Syndicate stop

Please advise rate interest proposed for firstly and net to company for first second and fourthly stop

In principle dont think you would be justified considering serial basis which involved prognostication course of money over long period ahead stop

Further are you satisfied that marketability serial bonds would not be restricted thus affecting free market at some period during life of bonds stop

Moreover draw to your attention while period may be a little better cost to Shell Union is greater than approximately 3.65 involved in Dillon Reads proposal stop

Weill telephoned us from Paris today and we recommended you keep in touch with Lazard Freres in New York and consider carefully any proposal more attractive than that of Dillon Reads

Attention Mr. van Eck, c/o Messrs. Vanderwoude & Duhig.

EXHIBIT No. 1983

[From the files of Shell Union Oil Corporation. Cable from Shell to Condeteck]

SHELL UNION OIL CORP.
80 Broad Street, New York

[Copy of message sent]

To Condeteck, London.

Date: Jan. 13, 1936

Confidential

In view of somewhat improved bond market Clarence Dillon advised me verbally today that his firm could now pay 97 for bonds subject to usual bankers out clause stop

In order to make progress my opinion we should now obtain from all parties interested offer in writing say by next Thursday for alternative \$50,000,000 with obligation refund one of present Shell Union Oil Corp. issues of \$60,000,000 with obligation to refund both Shell Union Oil Corp. and Shell Pipe Line Corp. issues (stop).

What is your opinion.

EXHIBIT No. 1984

[From the files of Shell Union Oil Corporation]

[Copy of message]

659 22nd January, 1936

To Deterding, London
By Condeteck

A R
New York 805

Confidential

#658

Your confidential 12 essential to have bankers concur in form of registration statement which must include copies of indenture and prospectus stop The act requires minimum 20 day waiting period between date application filed and date of issue therefore bankers insist on out clause from time of making offer described in prospectus until near end of waiting period stop Usual practice is to file amendment containing terms about two days before effective date of issue stop Definite commitment by bankers generally not more than 24 or in some cases 48 hours before date of issue full stop

Dillon Read has suggested following bankers out clause quote if any change shall have taken place in the condition of oil companies generally such as a decrease in the price of crude oil or a price war in important marketing territories or if any adverse change shall have taken place in the condition of Shell Union Oil Corp or if the demand for securities of oil companies in general or of Shell Union Oil Corp. in particular shall have declined or if the demand for high-grade bonds in general shall have declined and if any or all of such changes in the judgment of Dillon Read and Co. have been so substantial as to render the completion of the contemplated public sale of the debentures at blank percent and accrued interest impracticable or inadvisable Dillon Read & Co may cancel their obligations and those of the other underwriters under this agreement by notifying the company unquote full stop

(Handwritten:) See cable #659 for Estd. Cash Bal. 12/31/36.

Dillon Read equally agreeable give corporation out clause by which they can cancel agreement any time up to time bankers make definite commitment so there is no commitment on either side but enables preparation registration papers in conjunction with underwriters Full stop

As contemplated procedure of competitive bidding caused undesirable complications we have had discussions with view bring bankers possibly together without injury to our interests and understanding between two groups now arrived at on basis Dillon Read Hayden Stone will be joint syndicate managers both houses to head prospectus but Dillon Read to keep syndicate books Stop Dillon Read has undertaken to discuss matter with Lazard Freres with view giving them participation Stop Bankers unanimously of opinion that would be better make issue based on refunding both outstanding issues Stop Wrote you January 18th per Lafayette that we also favor this and accordingly recommend \$60,000,000 issue Stop We are reconsidering cash requirements in view of pipeline proposal California and will cable you again tomorrow Stop Lazard Freres have intimated to us that they thought serial issue basis of fourth plan submitted my cable 654 would net us one point higher as compared with issue straight bonds under their plan one Stop As this would make difference to us of \$600,000 think well worth exploring and my opinion we should ask from underwriters alternative offer on serial basis if such can be had on differential one point Stop

Shall be glad have your opinion Stop In case bankers can get together with Lazard Freres we can expect offer very shortly and our opinion we should not further delay matter in view also of your personal cable December 3rd as indenture will have to be submitted to SEC simultaneously with other registration papers

Attention Mr. van Eck, c/c Messrs Vanderwoude, Duhig.

EXHIBIT 1985

[From the files of Shell Union Oil Corporation]

FEBRUARY 10, 1936.

Shell Union group

Dillon, Read & Co.....	\$9,000,000
Hayden, Stone & Co.....	9,000,000
Lee Higginson & Co.....	5,000,000
Lehman Brothers.....	5,000,000
E. B. Smith & Co.....	3,825,000
Brown Harriman & Co.....	3,825,000
Blyth & Co.....	3,600,000
First Boston Corp.....	3,600,000
Lazard Freres & Co., Inc.....	3,150,000
Dominick & Dominick.....	1,800,000
Morgan Stanley & Co.....	5,000,000
	<hr/>
	52,800,000
Kidder Peabody & Co.....	750,000
Shields & Co.....	600,000
Dean Witter & Co.....	600,000
Riter & Co.....	600,000
Goldman Sachs & Co.....	500,000
Halsey Stuart & Co.....	500,000
J. & W. Seligman & Co.....	500,000
Cassatt & Co., Incorporated.....	400,000
Clark Dodge & Co.....	400,000
Hemphill Noyes & Co.....	400,000
Bancamerica-Blair Corp.....	350,000
Lawrence Stern & Co.....	250,000
Hallgarten & Co.....	250,000
Estabrook & Co.....	250,000
Whiting Weeks & Knowles.....	250,000
Blair Bonner & Co.....	200,000
Alex. Brown & Sons.....	200,000
Conrad Bruce & Co.....	200,000
	<hr/>
	7,200,000

EXHIBIT No. 1986

[From the files of Shell Union Oil Corporation]

[Copy of message sent]

703 PM 6TH MARCH, 1936.

A R New York, 2491

To F. Godber, care Pullman Condr Penna Train #16 car E-83 (arriving Paoli Penn 811 PM EST)

By R. Vanderwoude, Shell Union.

In explanation please note following we told Dillon we saw no use in going back either to friends or you but nevertheless he insisted upon making his views clear to you personally Full stop After consultation with Fraser as to most suitable time I have told Dillon he can reach you by telephone at Park Plaza at five o'clock tomorrow full stop We are going ahead with all necessary preparation on basis of sixty million ninety nine and ninety seven.

Attention Mr. Vanderwoude, C/C Merris. van Eck, Duhig.

EXHIBIT No. 1987

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORP.

50 West Fiftieth Street, New York

(Copy of message received)

From: F. Godber, Harrisburg, Pa.

Time sent: March 6, 1936

Addressed to: R. G. A. Van Der Woude, N. Y.

Time received: March 6, 1936

Thanks I have given very serious consideration Dillon's view but find no reason to change view already expressed to him.

GODBER.

Attention: Mr. van der Woude.

EXHIBIT No. 1988

[Letter from Dillon, Read & Co. to Investment Banking Section, Monopoly Study, Securities & Exchange Commission]

DILLON, READ & CO.,
NASSAU & CEDAR STREETS,
New York, November 3, 1939.

O. L. ALTMAN, Esq.,

Securities and Exchange Commission,
Washington, D. C.

DEAR MR. ALTMAN: In accordance with our telephone conversation of yesterday morning, I am enclosing herewith three photostatic copies of the accounts in connection with \$60,000,000 Shell Union Oil Corporation Fifteen-Year 3½% Debentures, due March 1, 1951, which you requested, as follows:

1. Dillon, Read & Co. Purchase Account
2. Dillon, Read & Co. Sales Account
3. Purchase Account No. 2, being the account which reflects transactions effected by Dillon, Read & Co. and Hayden, Stone & Co. pursuant to authorization from the underwriters.

The last-named account is designated on our books as "Purchase Account No. 2" merely to distinguish it from the accounts which reflect the several purchases by Dillon, Read & Co. and the other underwriters of the issue from the Company.

We call your attention to the fact that the dates appearing in the left-hand columns are the dates on which deliveries of the respective securities were made.

Also, in accordance with your request, I am enclosing one printed copy of the agreement dated March 7, 1936, between Dillon, Read & Co. and Hayden Stone and each of the underwriters and of the agreement dated March 10, 1936 pursuant to which Dillon, Read & Co. and Hayden, Stone & Co. were authorized to make purchases and sales for the accounts of the several underwriters. The transactions effective pursuant to the agreement of March 10, 1936 are the ones reflected in #3 above.

Yours very truly,

WILBUR C. DuBois.

enclosures

CONFIDENTIAL

ORIGINAL

\$60,000,000 SHELL UNION OIL CORPORATION FIFTEEN-YEAR 3½% DEBENTURES

DUE MARCH 1, 1951

NEW YORK, March 7, 1936.

DEAR SIRS: 1. Shell Union Oil Corporation (hereinafter called the "Company") proposes to issue \$60,000,000 principal amount of its Fifteen-Year 3½% Debentures, due March 1, 1951 (hereinafter called the "Debentures"). The Debentures are more particularly described in the Registration Statement relating thereto, in which, with your consent, you have been named as one of the principal underwriters. The Registration Statement was filed with the Securities and Exchange Commission on February 18, 1936 and certain amendments have been and are to be filed. Copies of the Registration Statement and

the Prospectus, as initially filed and as amended, have previously been sent to you. The Registration Statement in the form in which it shall finally become effective and the Prospectus in its final form are herein respectively referred to as the "Registration Statement" and the "Prospectus". The Registration Statement cannot become effective before March 9, 1936 at the earliest. After we are advised that the Registration Statement has become effective, we shall so notify you.

2. Reference is made to the agreement (hereinafter called the "Underwriting Agreement") between the Company and the several principal underwriters (hereinafter called the "Underwriters") named therein, which is being executed substantially simultaneously with the execution of this agreement. The names of the several Underwriters and the extent of their several commitments are set forth in the Underwriting Agreement. Dillon, Read & Co. and Hayden, Stone & Co. (hereinafter for convenience collectively referred to as "Representatives") will act on behalf of the Underwriters under this agreement with the powers herein provided for.

3. It is expected that the first offering of the Debentures will take place on such date, not later than March 11, 1936, as shall be determined by the Representatives. In connection with such offering, it is proposed that a Selling Group be formed after the Registration Statement shall become effective, the respective members of which are to purchase from the several Underwriters such aggregate amount of Debentures as shall not be retained by the several Underwriters as hereinafter provided. There is attached hereto a form of preliminary covering letter which has been sent to the proposed members of the Selling Group, together with a preliminary copy of the Selling Group letter. The investment bankers and possibly others to be invited to become members of the Selling Group, the respective amounts of Debentures to be offered to such Selling Group members and the other terms and provisions of the Selling Group are to be determined by the Representatives. Dillon, Read & Co. and Hayden, Stone & Co. are to be the Managers of the Selling Group.

4. Each of the Underwriters may retain such portion of the amount of Debentures which such Underwriter purchases from the Company as the Representatives shall determine, and each of the Underwriters authorizes the Representatives to include all Debentures not so retained in the amount of Debentures with respect to which the Selling Group is proposed to be formed. Debentures so retained by any Underwriter may be sold, after the Registration Statement becomes effective, by such Underwriter during the life of the Selling Group, only on the terms of the Selling Group letter, and with respect to such retained Debentures such Underwriter shall be bound by such terms, including the terms relating to concessions, allowances, and withholding of concessions in the event of any purchase of such retained Debentures by the Representatives in accordance with paragraph 9 of the Selling Group letter, as fully as if he had signed the Selling Group letter for the amount of such retained Debentures. In case the members of the Selling Group shall not take up and pay for the entire portion of the issue of Debentures with respect to which the Selling Group is proposed to be formed, each of the Underwriters shall be severally liable for Debentures not so taken up and paid for by Selling Group members, in the proportion which the amount of Debentures purchased by such underwriter from the Company (after deducting the amount of Debentures retained by him as aforesaid) shall bear to the total amount of the issue of Debentures (after deducting the total amount of Debentures so retained by all Underwriters).

After receipt of telegraphic or written announcement from the Selling Group Managers that the Selling Group books have been closed, members of the Selling Group and Underwriters will have the privilege of purchasing and selling Debentures among themselves at the public offering price, less all or any part of the Selling Group concession of $1\frac{1}{4}\%$, as more fully set forth in the Selling Group letter.

5. The price to be paid to the Company for the Debentures by the several Underwriters is set forth in the Underwriting Agreement. On the terms and conditions set forth in the Underwriting Agreement, you are obligated on the "date of purchase", as defined in the Underwriting Agreement, to take up and pay for the Debentures to be purchased by you thereunder, and you accordingly agree by acceptance hereof to have a certified check in New York funds or a New York Clearing House bank cashier's check, drawn to the order of Shell Union Oil Corporation, for the purchase price of the Debentures to be purchased by you, delivered to Dillon, Read & Co., against its receipt, at or before 9:15 a. m., Eastern Standard Time, on said date. By acceptance hereof you authorize Dillon, Read & Co. for your account to accept delivery of the De-

bentures from the Company, against delivery of the above-mentioned check to the order of the Company, and to give a receipt for such Debentures. Dillon, Read & Co., on behalf of the Representatives, will make all deliveries to Selling Group members, and, on the date of purchase, will deliver to you or your agent, against receipt, the amount of Debentures retained by you in accordance with paragraph 4 above. At the close of business on the date of purchase, Dillon, Read & Co., on behalf of the Representatives, will pay to you an amount equal to 97% and accrued interest with respect to the principal amount of Debentures not retained by you but offered on your behalf to members of the Selling Group; provided, however, that in the event all of such Debentures have not been sold to, and paid for by, Selling Group members, Dillon, Read & Co., on behalf of the Representatives, reserve the right to deliver to you for carrying purposes Debentures (on the basis of 97 $\frac{3}{4}$ % and accrued interest, representing the offering price less the Selling Group concession) in lieu of all or part of such payment. Debentures so delivered shall, during the life of this agreement, be held by you for carrying purposes only, subject to the direction of the Representatives, and none thereof shall be sold without the written consent of the Representatives.

By acceptance hereof, you hereby authorize Dillon, Read & Co. (without in any way obligating the latter so to do), in the event your check, mentioned above, to the order of Shell Union Oil Corporation does not reach Dillon, Read & Co. by the time stated, to arrange a loan for your account for the amount for which your check should have been received, and to pledge therefor the Debentures purchased by you, all upon such terms and conditions as Dillon, Read & Co., as your representative, may determine, and further authorize Dillon, Read & Co. for your account, to pay the proceeds of such loan to Shell Union Oil Corporation in payment for such Debentures. You agree in such event to pay the amount so borrowed to Dillon, Read & Co. in liquidation of the loan prior to the close of business on the same day, and any deliveries or payment due you hereunder are conditioned on prior repayment of such loan. Notice received by Dillon, Read & Co. from you cancelling your agreement, in accordance with the provisions of subparagraph (e) or subparagraph (f) of Section 13, or of Section 14, of the Underwriting Agreement, will serve to withdraw the above authorization to borrow on your behalf.

6. You agree that, in the purchase and sale of the Debentures, you will comply with all the requirements of the Federal Securities Act of 1933, as amended, and any applicable requirements of the Securities Exchange Act of 1934.

7. You will pay your own direct selling expenses, including transfer taxes, and will pay the fees and expenses of any counsel who may have been separately retained by you in connection with the issue. All other expenses not paid by the Company in connection with the organization of the Selling Group and the purchase and distribution of the Debentures shall be charged to the Underwriters in proportion to their Underwriting Agreement commitment, except that expenses of not to exceed $\frac{1}{2}$ of 1% may be charged against the members of the Selling Group as provided in the attached Selling Group letter and against the Underwriters who shall have retained Debentures under the provisions of paragraph 4 above or shall have taken up Debentures for carrying purposes under the provisions of paragraph 5 above, such expenses to be distributed in proportion to the Debentures purchased by such members of the Selling Group or retained and/or so taken up by such Underwriters, as the case may be.

8. The terms and provisions of this Agreement shall terminate at the close of business on May 8, 1936, unless sooner terminated by the Representatives or unless extended with the consent of Underwriters who have purchased from the Company 75% of the issue of Debentures. The Representatives may terminate this agreement, whether or not extended, at any time without notice. As promptly as possible after termination of this agreement, the net credit or debit balance in the account of each Underwriter shall be paid to or collected from each of the Underwriters. Notwithstanding any such payments or collections, you shall still be liable for your proportionate share of any expenses chargeable to Underwriters (in accordance with paragraph 7 above) and which may not have been taken into account in determining the amount of such payments or collections, and you shall also be liable for your proportionate share of any tax in the event any tax may from time to time be assessed against you and the other Underwriters as a group.

9. Upon receipt by Dillon, Read & Co. of any notice given pursuant to subparagraph (e) or subparagraph (f) of Section 13 of the Underwriting Agreement from any Underwriter cancelling its agreement under the Underwriting Agreement, as permitted by said subparagraphs, or in the event that Dillon Read &

Co. shall cancel its agreement under the Underwriting Agreement as permitted by said subparagraphs, Dillon, Read & Co. shall forthwith notify the other Underwriters by telegram of such cancellation.

10. Default by any one or more of the Underwriters with respect to their several obligations hereunder shall not release you or any of the other Underwriters from your or their several obligations hereunder.

11. Determination, apportionment and distribution by the Representatives of profits, losses and expenses shall be conclusive upon the Underwriters. The Representatives shall not be accountable for any interest on funds of any Underwriter at any time in the hands of Dillon, Read & Co.

12. As Representatives of the Underwriters, Dillon, Read & Co. and Hayden, Stone & Co. shall have full authority to take such action as they may deem advisable in respect of all matters pertaining to this agreement, but they shall act in such capacity only as agent for the several Underwriters. The Representatives may, in their discretion, for the purpose of carrying any unsold or undelivered Debentures, borrow money for account of the several Underwriters and pledge Debentures or obligations of the several Underwriters as collateral therefor, and each of the Underwriters hereby confirms his liability (in the proportion as stated in paragraph 4 above) with respect to any bank loans or other borrowings so arranged. The Representatives shall be under no liability with respect to the issue, form, genuineness, validity, enforceability or value of, or title to, the Debentures, or the validity or the provisions of any instrument under or pursuant to which the Debentures may be issued, or any representations made herein or in the Registration Statement or Prospectus or the Underwriting Agreement or for the delivery of the Debentures or for the performance by the Company or by others of any agreement on its or their part; nor shall the Representatives have any obligation with respect to qualification of the Debentures for sale under the laws of any jurisdiction; nor shall the Representatives be liable under any of the provisions of this agreement or in or for any matter connected therewith, except for want of good faith, or be under any obligation, either express or implied, which is not herein expressly assumed. Nothing herein contained shall constitute the several Underwriters partners with the Representatives or with each other or render the Representatives or any of the Underwriters liable for the obligation of any other Underwriter; and the obligations and liabilities of each of the Underwriters are several and not joint.

13. Any notice from the Representatives to you hereunder shall be deemed to have been duly given if mailed or telegraphed to you at your address set forth above.

14. This identical letter is being submitted to the other Underwriters. If the terms as set forth herein meet with your approval, please sign and return at once to the undersigned, care of Dillon, Read & Co. the duplicate copy of this letter enclosed herewith. Upon receipt by Dillon, Read & Co. at its office, 28 Nassau Street, New York, N. Y., of such signed copy on behalf of the undersigned, this letter and such signed copy will constitute an agreement between us.

Very truly yours,

March ----, 1936.

(Official Signature.)

DILLON, READ & Co.,
HAYDEN, STONE & Co.,

EXHIBIT No. 1989

[From the files of Shell Union Oil Corporation]

[Copy of message]

Received: 12·40 p. m. 11th, Mar. 1936.

From: J. W. Watson—Shell Pet. Corp., St. Louis, Mo. Filed: 11th A R.
To: Shell Union—S. W. Duhig. New York. 2912.

Re conversation yesterday our banking friends advise that based on inquiries they find debentures moving rather slowly one surmise being that rating is lower than had been anticipated

Attention Mr. Duhig.

% Messrs. van Eck, Vanderwoude.

Accepted:

By -----

"EXHIBIT No. 1990" appears in full in text

EXHIBIT No. 1991-1

[Letter from H. H. Egly, Dillon, Read & Co. to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

DILLON, READ & Co.,
NASSAU & CEDAR STREETS,
New York, January 9, 1940.

[Air mail]

Mr. PETER R. NEHEMKIS, Jr.,
Special Counsel, Investment Banking Section,
Monopoly Study, Securities and Exchange Commission.

Washington, D. C.

DEAR MR. NEHEMKIS: As you requested, we have looked over the memorandum prepared by your office, which was enclosed with your letter of November 27, 1939, and which is headed "Re: Distribution of Shell Union 3½% Debentures in 1936." In general the data appear to be correct.

For your information, the amount of Debentures offered to the Selling Group was \$27,480,000. This figure was left blank in your memorandum.

You have asked why no management fee was charged although it was originally contemplated that each of the Managers was to receive ½ of 1%. In view of the general market uncertainty which existed just prior to the offering date and of the unwillingness of the Company to meet our recommendation in pricing the issue, it was decided to waive the fee in this instance thus permitting the full discount to be divided among all underwriters and selling group members.

Very truly yours,

H. H. EGLY.

IHE.D.

EXHIBIT No. 1991-2

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

NOVEMBER 17, 1939.

MEMORANDUM FOR HENRY H. EGLY, ESQ., RE: DISTRIBUTION OF SHELL UNION 3½% DEBENTURES IN 1936

In arranging for the distribution of the \$60,000,000 debentures the first step taken by the managers was to determine the amounts to be reserved for retail distribution for each of the eighteen underwriters whose commitments were \$750,000 or less.

And the amounts initially so reserved and the amounts of the original commitments of each of these eighteen underwriters were:

	Amount reserved initially	Amount purchased from company
Kidder, Peabody & Co.	750,000	750,000
Shields & Company	600,000	600,000
Dean Witter & Co.	600,000	600,000
Riter & Co.	400,000	600,000
Goldman, Sachs & Co.	250,000	500,000
Halsey, Stuart & Co., Inc.	400,000	500,000
J. & W. Seligman & Co.	500,000	500,000
Clark, Dodge & Co.	200,000	400,000
Cassatt & Co., Inc.	400,000	400,000
Hemphill Noyes & Co.	400,000	400,000
Bancamerica Blair Corp.	350,000	350,000
Lawrence Stern & Co., Inc.	250,000	250,000
Hallgarten & Co.	250,000	250,000
Estabrook & Co.	250,000	250,000
Whiting, Weeks & Knowles, Inc.	250,000	250,000
Blair, Bonner & Co.	100,000	200,000
Alex. Brown & Sons	200,000	200,000
Conrad Bruce & Co.	200,000	200,000
Total	6,350,000	7,200,000

These amounts were determined by the managers (Dillon Read & Co. and Hayden Stone & Co.) in accordance with the indicated desires of each of these firms.

This procedure is customarily followed by Dillon Read & Co. and other managers of underwriting groups in determining the amounts to be reserved for underwriters.

According to the terms of the agreement among the underwriters (Exhibit-letter March 7, 1936) the determination of these amounts lies entirely in the discretion of the manager of the underwriting group. And this provision is customary and usual in such agreements.

Under the terms of this agreement, the managers also had the right to reserve debentures for each of the eleven other underwriters whose purchases were in excess of \$750,000, namely:

	<i>Amount of purchases from company</i>
Dillon, Read & Co.....	\$9,000,000
Hayden, Stone & Co.....	9,000,000
Lee Higginson Corp.....	5,000,000
Lehman Brothers.....	5,000,000
E. B. Smith & Co.....	3,825,000
Brown, Harriman & Co.....	3,825,000
Blyth & Co.....	3,600,000
First Boston Corporation.....	3,600,000
Lazard Freres & Co., Inc.....	3,150,000
Dominick & Dominick.....	1,800,000
Morgan Stanley & Co., Inc.....	5,000,000
	\$52,800,000

A manager generally has this right under the agreements entered into between underwriters, and the manager generally exercises this right.

But in the Shell Union case, it was determined by the managers, after consultation with the other nine underwriters, not to make such reservations, but to allot any balance of debentures not reserved for the smaller underwriters or purchased by the selling group, among nine underwriters and the two managers in proportion to their respective purchases from the company.

And it was further agreed that if the percentage of their purchases from the company which these eleven larger underwriters were required to take was larger than the percentage of his purchase reserved for any of the eighteen smaller underwriters, then any of the smaller underwriters for whom there had been reserved a percentage of his original purchase smaller than this, would be required to take up an additional amount of debentures sufficient to make the total percentage of his original purchase taken up by him as large as the percentage of purchase the eleven larger underwriters were required to take up.

The selling group was offered \$27,480,000 debentures (the figure to be supplied by Dillon Read & Co.). This offering was based on the assumption of oversales of \$550,000 debentures in order to have a short position which would be used to make purchases in the market for the purpose of market support or stabilization during the period of distribution.

The selling group purchased only \$19,175,000 debentures. As \$6,350,000 had been reserved for retail distribution of the eighteen smaller underwriters, there remained unsold \$35,025,000 of debentures. These unsold debentures were reallocated among the underwriters as follows:

To the eleven larger underwriters 66% of their combined total purchases of \$2,800,000—a total of \$34,849,000 debentures.

To three smaller underwriters in order to bring the total percentage of original purchase taken down by each up to 66%—\$176,000 debentures. These three smaller underwriters were:

	Original purchase	Initially reserved	Additional reservation
Goldman Sachs & Co.....	500,000	250,000	80,000
Clark Dodge & Co.....	400,000	200,000	64,000
Blair, Bonner & Co.....	200,000	100,000	32,000
	1,100,000	550,000	176,000

Only \$226,000 debentures were purchased in the market, reducing the short position to \$324,000. It was then determined to make no further purchases for support purposes, but to cover the balance of the short position out of the unsold debentures which the underwriters were required to take up. The amounts to be taken up by the eleven larger underwriters and the three above mentioned smaller underwriters whose allotments had been increased to 66%, were thereupon proportionately reduced in the amount of \$324,000. This resulted in each being obliged to take up 65.4% of his original purchase instead of the 66% previously computed.

It thus ensued that the eleven larger underwriters and three of the smaller underwriters took up 65.4% of their original purchase, one smaller underwriter took up 66⅔%, and one 80% and thirteen took up 100%.

Shell Union Oil Corporation, 3½% Debentures

Underwriters	Amount debentures purchased from co.	Final amounts retained debentures
Dillon, Read & Co.....	\$9,000,000	\$5,886,000
Hayden, Stone & Co.....	9,000,000	5,886,000
Lee Higginson Corporation.....	5,000,000	3,270,000
Lehman Brothers.....	5,000,000	3,270,000
Edward B. Smith & Co.....	3,825,000	2,502,000
Brown Harriman & Co., Inc.....	3,825,000	2,502,000
Blyth & Co., Inc.....	3,600,000	2,354,000
The First Boston Corp.....	3,600,000	2,354,000
Lazard Freres & Co., Inc.....	3,150,000	2,060,000
Dominick & Dominick.....	1,800,000	1,177,000
Kidder, Peabody & Co.....	750,000	750,000
Shields & Company.....	600,000	600,000
Dean Witter & Co.....	600,000	600,000
Riter & Co.....	600,000	400,000
Goldman, Sachs & Co.....	500,000	327,000
Halsey, Stuart & Co., Inc.....	500,000	400,000
J. & W. Seligman & Co.....	500,000	500,000
Clark, Dodge & Co.....	400,900	262,000
Cassatt & Co., Inc.....	400,000	400,000
Hemphill, Noyes & Co.....	400,000	400,000
Bancamerica-Blair Corporation.....	350,000	350,000
Lawrence Stern & Co., Inc.....	250,000	250,000
Hallgarten & Co.....	250,000	250,000
Estabrook & Co.....	250,000	250,000
Whiting, Weeks & Knowles, Inc.....	250,000	250,000
Blair, Bonner & Co.....	200,000	131,000
Alex. Brown & Sons.....	200,000	200,000
Conrad Bruce & Co.....	200,000	200,000
Morgan Stanley & Co., Inc.....	5,000,000	3,270,000
	\$60,000,000	\$41,051,000

Recapitulation:

Amount underwritten.....	\$60,000,000	
by 11 larger underwriters.....	52,800,000	
by 18 smaller underwriters.....	7,200,000	
Taken up by selling group.....	¹ 18,949,000	(31.6%)
Taken up by all underwriters.....	41,051,000	(68.4%)
by 11 larger underwriters.....	34,531,000	² (65.4%)
by 18 smaller underwriters.....	6,520,000	² (90.5%)
Per cent of Original Purchase taken by each 11 principal underwriters.....		65.4%
Smallest per cent of Original Purchase taken by any underwriter.....		65.4%
Largest per cent of Original Purchase taken by any underwriter.....		100.0%

¹ Exclusive of \$226,000 representing oversales. Total taken up by selling group including oversales \$19,175,000.

² Of their collective commitments.

No underwriter who initially had reserved for retail distribution 100% of his original purchase from the company had any further liability as to any debentures offered to and not taken by the selling group.

Any underwriter whose initial reservation was in excess of 65.4% of his original purchase was required to take no further liability as to any debentures offered to and not taken by the selling group.¹

On or about April 3, 1936 (approximately three weeks after the offering) the managers reported to the company the amount of debentures remaining unsold as being approximately \$11,800,000 distributed as follows:

Hayden Stone	-----	\$4, 000, 000
Lehman Brothers	-----	3, 100, 000
Morgan Stanley & Co., Inc.	-----	3, 200, 000
Lazard Freres & Co., Inc.	-----	1, 000, 000
Dominick & Dominick	-----	500, 000
		<hr/>
		\$11, 800, 000

On this date Dillon, Read & Co. had disposed of all but \$148,000 of the \$5,886,000 they had been required to take up. (Their original purchase had been \$9,000,000 at 97. Of these \$3,114,000 had been sold to the selling group at 97½, leaving \$5,886,000 for them to take up.)

Approximately \$940,000 of these had been sold within a few days of the offering date at 99 or 99 less ¼ to seven banks, three insurance companies and one dealer (Schedule). The balance was sold at prices between 94¾ and 97.

The profit in the purchase account (\$3,114,000 debentures purchased at 97 and sold to the selling group at 97½) was after deducting expenses \$22,109.40.

The sale of the \$5,886,000 taken up by Dillon Read & Co. resulted in a loss of \$55,201.04.

On the entire transaction Dillon Read & Co. thus realized a net loss of \$33,091.64.

It is the usual practice for the managers to charge a fee for managing an underwriting. In this case a fee of ¼% each to Dillon Read & Co. and Hayden Stone & Co. had originally been contemplated (and a statement to this effect was incorporated in an exhibit to the registration statement. In a subsequent amendment this provision was deleted). For certain reasons, it was subsequently determined that no management fee should be charged. The reasons should be furnished by Dillon Read & Co.

A fee of ¼% would have resulted in the payment to Dillon Read and Company of \$52,500 by other underwriters. So that had the usual practice been followed and a management fee charged in this amount, the amount of this fee would have eliminated the \$33,091.64 loss and left a net profit of about \$19,400.

This is the only underwriting of which Dillon Read & Co. has been manager or co-manager out of over twenty issues from January 1, 1936 to June 30, 1939 on which Dillon Read & Co. has not received a management fee from the other underwriters.

And it is the only underwriting in which Dillon Read & Co. has participated during this period on which a loss has been shown.

EXHIBIT No. 1992

[From the files of Shell Union Oil Corporation. Letter from J. C. van Eck to G. Legh-Jones]

J. C. VAN ECK,
30 Rockefeller Plaza,
New York, April 3rd, 1936.

MR. G. LEGH-JONES,

St. Helens Court, Crosby Square, London, E. C. 3, England.

MY DEAR LEGH-JONES: Mr. Clarence Dillon is sailing tomorrow for Europe. His first stop will be in England and he will no doubt pay his respects to Sir Henri. He will undoubtedly also report in regard to the Shell Union issue. He is not dissatisfied about the present position of the bonds. Only a few of the underwriters have large blocks on hand, probably amounting to some 12 million

¹It would appear that these underwriters had, under a strict interpretation of the agreement, a further liability proportionate to the amounts of their purchase not reserved for their retail distribution. The treatment accorded them was slightly more favorable than the treatment set forth in the agreement, and the amount of debentures the eleven largest underwriters were called upon to take was thereby slightly increased. The difference was not large in any case.

dollars in all. Most of the other underwriters and dealers have either been able to dispose of their bonds or only have a very nominal amount on hand.

A survey shows that Hayden, Stone & Co. have still on hand \$4,000,000; Lehman Brothers \$3,100,000; Stanley Morgan & Co. \$3,200,000; Lazard Freres \$1,000,000; and Dominick & Dominick \$500,000. It is not likely that these houses will sell at depressed prices. Mr. Dillon feels that the market is not likely to go down any further, in fact reported that today's quotation was around 95½ and that he expects it will remain steady at this price and probably improve.

Yours sincerely,

JCvE:MER

Cc: Mr. Godber, Mexico City.

EXHIBIT No. 1993

[From the files of Shell Union Oil Corporation. Cable from R. G. van der Woude to vanwood]

[Copy of message]

SENT

SHELL UNION OIL CORP.,
50 WEST FIFTIETH STREET,
New York, Jan. 20, 1937.

To: Vanwood—London.

6 Connection our discussions London regarding conversion our preference shares following information with regard to Tide Water—Associated financing is interesting:

Underwriters headed by Kuhn Loeb and Lehman Bros. offering \$40,000,000 fifteen year 3½% debentures at 101 to public also 500,000 shares \$4.50 no par cumulative convertible preferred stock (stop) latter will be offered to present holders 6% preference shares basis exchange one share old stock for one share new preferred plus \$2 cash (stop) Common shareholders also offered right subscribe to new preferred at 103 (stop) Balance of new preferred if any is underwritten to be sold to public at 103 (stop) Balance of old preferred to be redeemed at 105 plus dividends (full stop)

We have started preliminary discussions regarding what we might be able to do.

Attention: Mr. van der Woude, Mr. Duhig. Confirmation

EXHIBIT No. 1994

[From the files of Shell Union Oil Corporation]

(Hand written notation:) Paris, 2/6/37.

Personal.

4TH FEBRUARY, 1937.

J. C. VAN ECK, Esq.,

London.

MY DEAR VAN ECK: When I was in London I had a few words with Godber about our preference shares and about the possibility of doing some refinancing. We didn't go into any details, but it was suggested that if any conversion were possible we might take the opportunity of getting some additional money by, for instance, getting out a new issue of preference shares of say about \$50,000,000. As you will have seen from the cable which I sent to London about the Tide-Water Associated refinancing, I started on my return to make some enquiries, and although I haven't got very much definite to report yet, I would like to give you some idea of the indications which we have received so far.

For easy reference I might start by summarizing today's position as to our capital and debt, even though you are of course familiar with this position:

3½% debentures, due March 1, 1951-----	\$59,382,000
In treasury-----	618,000
Outstanding-----	<u>\$58,764,000</u>
2½% notes, due November 1, 1937-----	<u>\$3,000,000</u>
5½% Preferred Stock-----	\$37,979,800
In treasury-----	3,629,800
Outstanding-----	<u>\$34,350,000</u>
Common \$tock—13,070,625 shares-----	<u>\$233,672,821</u>
Warrants, expiring 1st October, 1939-----	25,990
In treasury-----	2,158
Outstanding-----	<u>23,832</u>
x 25 shares x \$35=\$20,853,000 if converted.	

I further enclose a statement showing the estimated cash receipts and disbursements for the year 1937. The statement speaks for itself, although I might say a word about the capital expenditure item. So far we have only authorized the so-called "A" Budget, which is for an amount of about \$29,000,000. The "B" Budget which we have left in abeyance amounts to about \$21,000,000. There is no doubt that the position as we see it now would not justify this additional outlay, and for the purpose of estimating our cash at the end of the year I have assumed that during this year we are likely to spend on capital about as much as we did during 1936. I think this is a fair supposition, as even if we do not authorize the "B" Budget at all, experience has shown that in the course of the year additional expenditures are required, and I hardly think that we could expect to spend less than last year, unless absolutely forced otherwise. (In 1935 we spent about an equal amount.)

The statement does not provide for dividends on our common shares. Assuming this to be \$1 a share (keeping in mind the undistributed profits tax), our cash position at the end of the year would be a tight one, considering that on an average about \$10,000,000 of our money is frozen.

It would appear, therefore, that if we should be able advantageously to convert our preference shares to a cheaper issue, we would do well to endeavor at the same time to provide for some additional funds.

So far we have limited ourselves to asking some of our friends to let us have a general idea of what, in their opinion, could be done, more particularly with regard to converting our present issue into another cheaper one, which would also provide for some additional money. I have not been enquiring about the prospects of another debenture issue, as I rather feel that to replace stock with debt is not advisable. I suppose, however, that if we should wish to consider this aspect we ought to be able to get about the same terms as the Tide Water Associated, whose \$40,000,000 15-year 5½% Sinking Fund Debentures have been placed on the market at 101, with a net to the company of 99, though the fact that we have already \$60,000,000 outstanding might make this assumption a little on the optimistic side.

A point to be remembered in connection with this is that our declared value for capital stock tax purposes is \$35,000,000, and should we redeem our present preferred stock and not replace it with stock, the entire income of Shell Union would be subject to excess profits tax.

The general feeling seems to be that it would not be advisable to try and sell a new preferred stock without warrants or conversion privileges, and that in any case this would probably have to be a 5% stock. Preference shares with warrants to buy common do not seem to be as satisfactory as convertible preferred stock, and the market generally seems to be more attracted at the moment by cumulative convertible preferred stock. Our present issue, as you of course remember, was also convertible, but the conversion rights expired in 1935

The tentative indications given by some of our friends without their consulting each other are as follows for \$50,000,000 convertible preferred stock:

	500,000 shares, par \$100			
	Hayden Stone	Lee Higginson	Lazard Freres	
Dividend rate-----	4%-----	4¼%-----	4¼%-----	4¼%-----
Conversion-----	into 2.86 common shs. @ 35.	into 2.86 shs. @ 35; after 1939 into 2½ shs. @ 40.	into ¾ common shs. @ 30	1st 250,000 shs. into ¾ common @ 30; 2nd 250,000 into ¾ common @ 40.
Price to Public-----	100-----	100-----	100-----	102-----
Net to Company-----	97-----	97-----	97-----	99-----
Common held by B. P. M. after conversion.	58%-----	58% or 58.7%-----	57.08%-----	57.90%-----
If bond warrants also exercised B. P. M. % would be.	55.7%-----	55.7% or 56.4%-----	54.86%-----	55.62%-----

The Tide Water-Associated offer provided for their new 4½% cumulative convertible preferred stock to be exchanged for one share of their present 6% preferred stock share for share, plus two dollars in cash. The company have offered to their common shareholders the right to subscribe at \$103 per share for such shares of the new preferred stock as would not be issued under the exchange offer. Their conversion privileges are as follows:

Convertible at the option of the holder on or before January 1, 1947 (or, in case of earlier redemption, on or before the tenth day prior to the redemption date) into Common Stock of the Company at the following conversion prices per share (taking the \$4.50 Preferred Stock at \$100 per share); on or before July 1, 1939, \$27.50 (or ¾ shares of Common for 1 share of Preferred); thereafter and on or before January 1, 1942, \$30.00 (or ¾ shares of Common for 1 share of Preferred); thereafter and on or before July 1, 1944, \$35.00 (or ¾ shares of Common for 1 share of Preferred); and thereafter and on or before January 1, 1947, \$40.00 (or ¾ shares of Common for 1 share of Preferred), all of which conversion prices are subject to adjustment to meet dilution, etc.

I don't like what Lazard Freres indicated, and with regard to the other two, it seems to me that both the price to the public and the net to the company are not sufficiently satisfactory. Supposing, however, that a proposition could be worked out on the basis of, say, 100 to be net to the company, the following calculation gives an idea of our saving and what the net cost would be of our new money, assuming a dividend basis of 4½% (we may be able to get 4¼% but this depends very much on the conversion rights:

Total to be issued-----	\$50,000,000
Present outstanding-----	\$34,350,000
Premium on redemption-----	1,717,500
	36,067,500
	<u>\$13,932,500</u>
Fees & Expenses-----	200,000
New Money-----	<u>\$13,732,500</u>
Present Annual Preferred dividend-----	\$1,889,250
Dividend @ 4½% on \$34,350,000 (present outstanding Preferred Stock)-----	1,545,750
	<u>\$343,500</u>
Annual Saving-----	617,963
Dividend @ 4½% on \$13,732,500 (new money)-----	<u>\$274,463</u>
Dividend @ 4½% on \$1,717,500 (Premium on redemption of present Preferred Stock)-----	77,288
	<u>\$351,751</u>
Dividend @ 4½% on \$200,000 (Fees & Expenses)-----	9,000
	<u>\$360,751</u>

Cost of new money 2.63%.

Of course we would have to remember, in considering the above, that we would have to pay out \$1,717,500 as a call privilege on the present preferred stock. It is true that through sinking fund retirement we would probably have to pay this anyhow, but of course it would be spread over a large number of years, and it is always possible that they could be obtained at less than 105. I might say while on the subject of sinking fund that there would be no need in any new issue to provide for sinking fund payments. Apparently the market at present is not particularly interested in such a feature. We could also possibly avoid any voting rights for the new preference shares.

In connection with the first part of above paragraph, my thought is that we might very well offer an exchange to our Preferred stockholders, for instance along the lines followed by Tide Water-Associated, which would give the holders of our present Preference shares an opportunity to take the new stock instead of taking the cash at 105. An exchange of new for old stock does not involve a capital gains tax here and many might prefer to make an exchange so far as their own tax position was concerned and at the same time it would be advantageous to the Corporation- (on the basis of Tide Water refinancing, if holders exchange, it would cost \$2 plus underwriters' commission of \$1.25).

Last week I saw Dillon and Forrestal. So far we haven't heard from them, but I expect to get an indication of their views shortly.

I have been turning over in my mind the idea of combining the conversion of our existing preferred stock into \$35,000,000 new preferred stock with an issue of short-term notes, say \$15,000,000, over a period of five years. I have not made any enquiry regarding the rate of interest which might be obtainable but I do not think that it should exceed an average of, say, $2\frac{1}{2}\%$ or 3% . The combination of, say, $4\frac{1}{2}\%$ preferred and short-term notes would reduce the over-all interest charges compared with a new issue of \$50,000,000 $4\frac{1}{2}\%$ preferred. This combination of preferred stock and notes has the advantage of avoiding a further reduction in the Group's percentage, and at the end of the five-year period, allowing for the operation of the sinking fund on our funded debt, our total indebtedness would be, say \$86,000,000 ahead of the common stock or, say, \$15,000,000 less than would be the case by issuing a new preferred in the amount of \$50,000,000.

The capital expenditure as proposed for this year by the operating companies, including the "B" Budgets, is of course very high, but amongst other items it contemplates providing for the normal increase in trade in the northern refinery area of Shell Petroleum over a period of years. This type of expenditure will no doubt have to be made eventually, and we shouldn't overlook that with rising wages and rapidly increasing cost of materials any postponement of inevitable expenditure will lead to greater expense.

You will appreciate that this letter is only intended to give you some idea of what the result has been of our enquiries so far, and I hope later on to be able to give you something more definite and also give you my further views; but if in the meantime you can give it some thought and if possible give me some indication what the views on your side are, this would be very helpful.

Yours sincerely,

(Original signed by R. G. A. van der Woude.)

RW/AB

Encl.

Copies to Mr. Fraser, Mr. Belither.

EXHIBIT No. 1995

[From the files of Shell Union Oil Corporation. Cable from R. G. van der Woude to Vanwood]

[Copy of message]

SENT

SHELL UNION OIL CORP.,
50 WEST FIFTIETH STREET,
New York, March 5, 1937.

To: Vanwood—London.

18. Yours 21 generally speaking I am in agreement though we may have to modify our views somewhat with regard to terms (fullstop)

Regarding last paragraph quite agree and furthermore in my opinion best not to disturb grouping of bankers as was formed under last year's bond issue in fact

I understand Dillon Read Hayden Stone and Lee Higginson have already come to such understanding amongst each other (fullstop) My reasons are:

Firstly—We should avoid running into same complications as last year.

Secondly—Neither Hayden Stone nor Lee Higginson would in my opinion be suitable leaders.

Thirdly—We could not very well switch over to entirely new leaders without first giving last year's group their opportunity (fullstop).

My idea is therefore to give last year's leaders in Dillon group an opportunity of jointly making us an offer along the lines as per your cable (fullstop) If their offer is unsatisfactory to us I would favour inviting Lehman Bros. to make us an offer (fullstop) They are anxious to take leading position and I personally feel as you know that a closer connection with them would be advantageous (fullstop) Presumably they would handle matter in conjunction with Kuhn Loeb (fullstop).

Would appreciate quick reply as situation becoming somewhat awkward to handle unless we definitely know what line we are going to take (fullstop) You will appreciate that one of first questions bankers will ask is as to whether group intends to take up new preferred at the rate of 1 for 40 of their holdings of common shares and in fact we understand that if group do not intend to make this investment it will have to be stated in the prospectus.

Attn. Mr. van der Woude.

EXHIBIT No. 1996

[From the files of Shell Union Oil Corporation. Memorandum by S. W. Duhig]

SHELL UNION FINANCING

Memorandum for the file

MARCH 16, 1937.

On March 16th bankers called at the Shell Union office for the purpose of stating the proposition which they and their group were prepared to make in connection with refinancing the present Shell Union preferred stock and raising additional money, if necessary. Dillon, Read & Co. were represented by Mr. Dean Mathey and Lee, Higginson & Co. by Mr. E. N. Jesup.

In opening their discussion they stated that they had agreed among themselves that the group would be approximately the same as the 1936 group and that the group management would be shared in the following proportions:

Dillon, Read & Co.....	40%
Lee, Higginson Corp.....	20%
Hayden, Stone & Co.....	20%
Lehman Bros.....	20%

The bankers stated they were authorized to say that although we were in the midst of changing conditions, they would be willing to undertake today to underwrite an issue of \$87,000,000 of preferred stock carrying a dividend rate of $4\frac{1}{2}\%$ and convertible to common stock for the first $2\frac{1}{2}$ years at \$35 and for the next $2\frac{1}{2}$ years at \$40. This could be sold at par less a commission of $2\frac{3}{4}\%$. They suggested that the terms would be approximately the same if we sold merely enough new preferred to retire the present preferred. In the case of new preferred, which is taken up by present shareholders in exchange for the old preferred, the bankers stated that they had not discussed the question of commission in detail, but agreed that the rate of commission would be less on such exchanges.

Mr. van der Woude advised that this offer was disappointing and unsatisfactory and that unless a better arrangement could be worked out we were not prepared to undertake this business with their group.

The bankers then made some suggestions regarding the raising of new money. These proposals were informal and were made without previous understanding with their group. They thought they might undertake to sell \$10,000,000 of 10-year $3\frac{1}{2}\%$ debentures plus \$22,500,000 of serial notes maturing at the rate of \$2,500,000 per annum for 9 years. The 10-year debentures would be convertible for the first year at \$35 per share of common and for the next 4 years at \$40. Another, and possibly better, plan which would reach two classes of investor would be to issue \$12,500,000 of 10-year debentures and \$17,500,000 of serial notes maturing in 1 to 5 years at \$3,500,000 per annum. A similar arrangement would be to put out \$20,000,000 of 10-year convertible debentures and \$10,000,000 of 5-year notes, maturing \$2,000,000 per annum.

The bankers suggested that the soundest form of financing at the present time is to sell common stock and that the most profitable way to accomplish this is to adopt a suggestion similar to the above where the 10-year debentures are convertible for the first year at practically today's market price of common.

These plans were taken as being merely tentative suggestions and subject to further discussion.

S. W. D.

SWD-S.

EXHIBIT No. 1997

[From the files of Shell Union Oil Corporation]

[Copy of message]

SENT

2842

NEW YORK, 7.30 P. M. Mar. 16th, 1937.

to: Vanwood, London.

By: R. van der Woude.

24 Dillon Read inform us after consultation with their group best proposal is 4-½ percent preferred stock convertible first 2-½ years at 35 next 2-½ years at 40 to be sold at par yielding 97-¼ to us Stop

We have informed them this very disappointing and no use pursuing further unless they can change their views Stop

For your information bond market at present very weak Full stop

Will cable further after we have given matter further thought.

Attention Mr. Duhig.

C. C. Mr. van der Woude.

EXHIBIT No. 1998

[From the files of Shell Union Oil Corporation]

[Copy of message]

SENT

To: Vanwood, London.

2884

CSG

By: R. G. A. Vanderwoude.

NEW YORK, 6 P. M. Mar. 17th, 1937.

27 Referring my cable 24 consider we should give Dillon group every opportunity of revising their offer and propose to set limit of time say 10 days Fullstop

At the end of this period in case the revised offer if any is not acceptable we to notify them that we consider ourselves entirely free to approach others Fullstop

I understand that provided it is made clear negotiations with Dillon have come to an end members of group then free to deal with us. Fullstop

In aforementioned event suggest we consider Kuhn Loeb/Lehman combination or Morgan Stanley as leaders Stop In latter case would be in favor of suggesting to them our desire of giving Lehman a prominent position Fullstop

With regard to conditions of market present bond market very disturbed and interest in fixed interest or fixed dividend bearing securities considerably lagging Fullstop

General feeling is that this will continue and that what market will be interested in is common shares or securities with conversion rights Fullstop

We should therefore bear in mind that in issuing new preference shares attractive conversion rate will have to be chief feature Fullstop

In my opinion while not likely we shall be able to get 4% preference shares it may be possible to get 4½% provided conversion right made attractive and will probably have to be 35 with some step up after say 2 years Fullstop

With a 4½% preference share we might be able start conversion rights at 37½ Fullstop

Foregoing is my judgment based on careful survey of views of market Fullstop

Whether this is right or wrong wish emphasize conversion rights will definitely have to be made attractive Stop I do not of course intend discuss with Dillon any revision of our ideas of terms as put before them and propose merely to give them the opportunity as indicated above and await their further reaction

Attention Mr. Dubig.
Mr. Van Der Woude.

EXHIBIT No. 1999

[From the files of Shell Union Oil Corporation]

Telephone: Avenue 4321

J. C. VAN ECK,
ST. HELENS COURT, GREAT ST. HELENS,
London, E. C. 3, 18th January, 1938.

Personal.

Mr. R. G. A. VAN DER WOUDE,
New York.

DEAR VAN DER WOUDE: With reference to the discussions we had on the telephone regarding a possible new banking connection. Whenever you find the time opportune and favourable and you have made a contact I think it might be well, before discussing any other terms, to find out what Morgan's ideas are about restrictions. I am afraid you may run up against the same difficulties as you had in your negotiations with the insurance companies. I presume that Morgan will be as strict as any other, although of course they participated in Dillon Read's and Hayden's Shell Union's issue of 60,000,000 dollars which was free from irksome restrictions. Of course, I can quite realise that no banking house or insurance company likes the idea of loaning money when such money would be used for the payment of dividends. On the other hand where Shell Union has at present a fairly substantial surplus and still substantial cash it would be unreasonable to tie up this surplus and cash with the same restrictions as would apply to new money. I fear that Shell Union during the first six months of 1938 may not earn sufficient to continue to pay a half yearly dividend of 50¢ and we would certainly not look with favour upon a reduction of the dividend if a substantial amount was earned during the first six months and the prospects for the second six months were favourable.

With kind regards,
Yours sincerely,

J. C. VAN ECK.

EXHIBIT No. 2000-1

[Letter from C. B. Stuart, Halsey, Stuart & Co., Inc., to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Telephone Whitehall 4-4400

HALSEY, STUART & CO. INC.

Chicago, New York, and other principal cities

35 WALL STREET, New York, N. Y., January 8, 1940.

Mr. PETER R. NEHEMKIS, Jr.,
Special Counsel, Investment Banking Section,
Monopoly Study, Securities & Exchange Commission,
Washington, D. C.

DEAR MR. NEHEMKIS, I have your note of January 6th and enclosed you will find a signed stipulation. In accordance with your request this is being sent you special delivery air mail.

I want you to know I very much appreciate your handling the matter in this way rather than my going over to Washington.

Very truly yours,

C. B. STUART.

CBS: JB.
encl.

STIPULATION

It is hereby stipulated and agreed that the memorandum dated May 11, 1938, addressed to Mr. H. L. Stuart, Chicago office, and initialled CBS, is a true copy of an original communication in the files of Halsey Stuart & Co., Inc., and that the said document was sent by the New York office of Halsey Stuart & Co., Inc.

CHARLES B. STUART,
Halsey Stuart & Co., Inc.

EXHIBIT No. 2006-2

[From the files of Halsey, Stuart & Co., Inc.]

NEW YORK OFFICE, May 11, 1938.

Mr. H. L. STUART,
Chicago Office.

DEAR HARRY, I understand Morgan Stanley are working on a good size bond deal for Shell Union Oil. I further understand that Dillon Read, who handled the last issue, made such a botch job of it, the Company will have nothing further to do with them.

I presume you saw where Lehman are underwriting an issue of preferred stock of Philip Morris. There is a thirty day commitment pending an offering to the stockholders and it is my understanding Lehman have had a lot of turndowns. After a management fee and expenses totalling a half a point, there is a net of \$1 to the underwriters.

Very truly yours,

C B S

CBS: JB.

EXHIBIT No. 2001

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORPORATION,
50 WEST 50TH STREET,
New York, N. Y., April 13th, 1938.

Personal.

J. C. VAN ECK,
London.

MY DEAR VAN ECK: With further reference to your letter of the 21st ult., since writing you on the 1st instant I have been discussing the matters raised by you with Fraser during my recent visit to the Mid-West, and you will shortly hear fully from Fraser the result of our discussions.

The March results of Shell Petroleum, I am afraid, will not be very comforting. At the end of this month both Belither and Fraser will be coming here, when we will review our forward position with regard to budgets, estimated profits, and cash, and I will in due course be writing you further.

With regard to financing, since talking to you on the phone two days ago I have been contacting a few banks here and I expect to have some definite information fairly shortly. I shouldn't think that it will prove difficult to borrow from fifteen to twenty million dollars for five years on a serial basis, more or less on the same terms as were offered to us last year when it was finally decided to do our temporary financing through Friends. I doubt whether it would be possible to do anything for a longer period than five years. We might possibly make a small debenture issue for ten years, but I think you share my feeling that this would not be very desirable. Such an issue would of course have to be registered.

On the question of finance we have had some preliminary discussions with Morgan, Stanley with a view to enabling them to familiarize themselves somewhat with our activities, and judging from the discussions I have had with them I do not anticipate any difficulties such as you referred to in your letter of the 18th January. Morgan Stanley seem to be very pleased to get an opportunity of establishing a connection with us.

Yours sincerely,

(Original signed by R. G. A. van der Woude.)

RW/AB

cc: Mr. de Kok, Messrs Fraser Belither.

EXHIBIT No. 2002

[From the files of Shell Union Oil Corporation. Memorandum by S. W. Duhig]

MEMORANDUM

I have today discussed financing with Mr. Meredith C. Laffey of the Equitable Life Assurance Society of the U. S. A. I told him that we are now approaching the end of our third 12-month period in which Shell Union earnings qualified for life insurance investment under the terms of Section 100 of the N. Y. State Insurance Law (See attached statement).

Mr. Laffey stated they had had one case in which they had not adhered to the calendar year or fiscal year basis in determining the qualifications of the borrower and that he felt we might very well proceed with tentative discussions regarding a loan to Shell Union.

Mr. Laffey stated that without consulting his Committee or investigating any of the details of our company, he thought it probable that they could arrange a loan to Shell Union of say, 20 to 25 million dollars for 10 years at 3½%, for which they would pay us 99. He thought that in view of the terms of our present 15-year Debentures they would require that the principal of the new loan be repaid serially at the rate of 10% per annum. (Incidentally, this is approximately the same proposition as suggested tentatively by Morgan, Stanley & Co., except that they would charge 2% for underwriting.)

Equitable would be rather particular about having full certification by Price, Waterhouse & Co. similar to that required for S. E. C. registration and they would also ask that Paul Paine bring up to date his 1936 statement regarding properties. Mr. Laffey thought that in our case they would not require any special restrictions regarding additional borrowing, the payment of dividends or other requirements which are more restrictive than those contained in our recent Debenture Indenture. We would also not be put to the expense of engraving a series of notes although, as is usual with life insurance companies, they would require that we supply the necessary certificates at some future date in case circumstances should make it advisable for them to re-offer this paper to a group.

This type of borrowing, of course, has the advantage of still leaving local bank credit free for future use and also it is obviously an advantage over a public registered offering.

During our group discussions in New York next week we shall be discussing revised budgets and cash estimates and will then be in a position to take this up further with the insurance company.

S W D

SWD-S.

Apr. 22, 1938.

NOTE: I have today made a further check with Mr. Laffey of Equitable, who assures me that although they have not had formal clearance from their Legal Department, we may feel quite safe in assuming that Shell Union is eligible for loans by N. Y. insurance companies and that his company is prepared to lend us \$25,000,000. In his opinion we may proceed at any time to work out the terms of the loan with them in detail.

Apr. 29, 1938.

EXHIBIT No. 2003

[From the files of Shell Union Oil Corporation]

[Copy of message]

SENT

To: Vanwood, London.
By: R. G. A. van der Woude.

4474

NEW YORK, 1 P April 30th, 1938.

PRIVATE

#46 Further our #42 we have developed following proposals for Shell Union financing Stop

Morgan Stanley & Co. suggest 10 year 3½% sinking fund
Debentures could now be sold at 99 which after 2% commission

Would make this money cost us 3.86% Stop

Amount discussed was \$25,000,000 but do not expect much difficulty in increasing this Stop

Also discussed convertible feature so as eventually to put this on common stock basis and they have indicated that with our common selling on the market at 13¼ per share they might issue at par a new debenture convertible into common at 16½ per share or 60 shares per \$1000 debenture Stop

If issue were offered to present stockholders at rate of \$2 principal amount of debentures for each share of stock held the new issue would yield \$26,141,000 Stop

In that case if Bataafsche elected to take approximately \$17,000,000 debentures there would of course be no underwriting commission on that portion although bankers feel they might undertake to dispose of these later if Bataafsche so decided Stop

Other alternative would be for Bataafsche to waive subscription rights whereupon bankers would make immediate public offering of that amount during period while other stockholders were being given opportunity to subscribe for \$9,000,000 debentures Stop

They suggest right to call debentures with initial redemption price of \$105 and a sinking fund which would retire the whole issue over 10 year period but this can probably be improved upon Stop

If convertible type of financing should be decided upon it would be interesting to know Broekman's attitude regarding subscription rights. Fullstop

In regard to loans from commercial banks we would have no difficulty raising \$25,000,000 at rates ranging from 2.68% for 3 years or 3¼% for 5 years but have confirmed cannot at present obtain longer term here although possibility of somewhat longer arrangement some banks outside New York for moderate amount Fullstop

We have also approached Equitable Life Assurance Society with suggestion that although Shell Union last 3 fiscal years have not shown earnings which meet requirement of N. Y. statute relative investment of insurance company funds we shall by the end of April have completed three 12 months periods during which we have met these requirements Stop

Equitable have studied this matter and while still subject to final approval their legal department they assure us they are prepared to enter negotiations for 10 year loan of \$25,000,000 Stop

They tentatively suggest interest rate 3-½% for which they would pay us 90 Stop

This would of course save us underwriters commission and expense of registration for public offering and although they would require examination by lawyers, auditors and property expert requiring about 60 days time they feel that special restrictive covenants such as recently suggested by Prudential should not be necessary Fullstop

We have completed revised estimate of 1938 cash and profits and on basis of reduced capital budget expenditure of about \$44,000,000 estimated cash at December 31st is about \$18,000,000 before making any allowance for common stock dividend Stop

This does not provide for unusual property deals Stop Profits estimate indicates about \$13,500,000 for the year of which about 37¢ per share would be earned during first half year after preferred dividends Fullstop

Estimates based on basis of present prices with exception of Shell Oil territory where have assumed average reduction of 2¢ in gasoline price over period May/December Fullstop

Full details mailed today by SS "Paris" Fullstop

Summarizing above will show that the prospects of doing public financing are improving Stop

It is impossible to foretell whether further improvement will take place and how quickly and therefore there is no way of telling when it might be possible to make an issue of preference shares whether convertible or otherwise which we would prefer in favor of a bond issue as we do not particularly like increasing our funded debt Fullstop

While we would favor continuing present arrangement with friends if we could be fairly certain of issuing preferred shares later in year provided they willing extend option nevertheless in view foregoing considerations as well as cash position and uncertainties of future we are of opinion that serious consideration should be given to take advantage of present opportunities and acquire about \$25,000,000 Fullstop

If we are in agreement on this we suggest that financing through insurance companies would be most preferable and next best bond issue preferably convertible

Attention of Mr. van der Woude.
CC Messrs. Duhig, Fraser, Belither.

EXHIBIT No. 2004

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORPORATION,
50 WEST 50TH STREET,
New York, June 1, 1938.

Personal.

Mr. A. FRASER,
Shell Petroleum Corporation,
St. Louis, Missouri.

MY DEAR FRASER: I enclose copy of telegram just received from Belither in connection with the report which Equitable require from Paul Paine before we can close our financing. I also enclose copy of my reply, from which you will see that we are urging Paine to make as comprehensive a preliminary report as possible so that the Equitable will be justified in closing the deal prior to receiving his final report based on personal inspection of the properties. You will, therefore, be receiving direct from Paine requests for answers to questions necessary to bring up to date all the important points in his 1936 report. There is no reason why, based on our answers to his interrogations, his final report should not be merely a confirmation of the facts contained in his preliminary report.

I shall appreciate it very much if you will have your people do all possible to expedite this work and at the same time please do everything you can to keep the deal with Equitable strictly under cover. Their commitment to us is entirely contingent on clearance being given by their counsel on all legal phases and therefore it would be very regrettable if word got about which would offend Morgans in any way, seeing that we are still relying on them in case there is a hitch with Equitable, as well as in case of future public financing.

Yours sincerely,

(Original signed by R. G. A. van der Woude.)

Encls.

Cc—Mr. S. Belither.

EXHIBIT No. 2005

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORPORATION,
50 WEST 50TH STREET,
New York, May 23, 1939.

Air mail

Mr. R. VAN DER WOUDE,
St. Louis, Mo.

DEAR MR. VAN DER WOUDE: I have today talked to Equitable Life in reference to cutting down the interest on our debentures. They understand, of course, that the trend which we discussed last February has progressed still further and that we shall have to do something about it. So far as their \$25,000,000 loan is concerned, it now has an average life of 11.3 years (taking into account the annual reduction through sinking fund) and the cost to the company to redeem at 104 puts it on a 3.20% basis. Thus if Equitable cut the coupon rate even as much as $\frac{1}{8}\%$ it would be equivalent to their making a new loan to us at 3.075%. This is the same thing as saying that a 3% loan plus the premium which we have to pay for redeeming the old loan would be equivalent to their reducing the present coupon from 3.625% to 3.50%. I am satisfied that at this moment we could obtain this $\frac{1}{8}\%$ reduction and that we could do it by simply amending the present Trust Agreement. This is still not good enough, but it is at least a basis for further negotiating.

In their opinion we could sell 15-year 3% debentures to the public at a price to yield 2.95%, that is 100.60. Taking off 2 points for the Bankers would leave us 98.60, which is a 3.12% basis to the company, not counting the expense of registration and the risks involved on account of the waiting period. We do not yet know the details of the Socony public issue of \$50,000,000, but it will quite likely be for about 20 years at 2¾%. I had a short talk with Ewing today and he thinks Socony may even sell 25-year debentures. I shall have a further talk with him tomorrow as to what Shell's present rating is for a public offering.

There is just as much need for discussing re-financing of our 3½% Debentures as there is of the Equitable loan, as considering the redemption price and the average life they are both on a 3.20% basis. Equitable felt that we might make a joint deal with them and Metropolitan and Prudential to cut the rate of our whole \$82,427,000 debt. Equitable would not be willing to take more than the present \$25,000,000 but I think it is quite possible we can deal advantageously with the three companies jointly. I have therefore talked to Metropolitan and have got Gilbert Stanley doing some figuring once more. It seems they are having a convention this week and he would not be able to take it up seriously for two or three days, but I am sure you agree that this can do no harm. I think in the meantime I shall not complicate it by talking to Caleb Stone of Prudential.

Laffey, of Equitable, pointed out that on the basis of our first quarter earnings we really had put ourselves in an ineligible position during the past twelve months, according to New York Life Insurance standards. This is a point against us, but I feel that they are hungry enough for the business to find some way around that difficulty. Laffey stated that if they did reduce the interest rate they would want an agreement that we could not exercise any call privilege for at least twelve months. I do not see any real objection to this provided we can get a rate reduction down to today's market.

I shall let you know of further developments and shall be glad to hear from you by telephone in case you have any comments on the above.

Yours sincerely,

(Original signed by S. W. Duhig)

SWD-S

Socony's call price on present issue is 102½. Ours is same on public issue, but 104 on Equitable.

EXHIBIT No. 2006

[From the files of Shell Union Oil Corporation]

SHELL UNION OIL CORPORATION,
50 WEST 50TH STREET,
New York, May 24, 1939.

Air mail

MR. R. VAN DER WOUDE,
St. Louis, Mo.

DEAR MR. VAN DER WOUDE: I have just had a talk with Ewing and Perry Hall. They will be sending me some figures in the morning, but this is a summary of what they think we could do at today's market, viz:-

Maturity	15 years	20 years
Coupon	2½%	2¾%
Price	98½ (yield 2.6%)	98½ (yield 2.87%)
Commission	1¾	2
Cost to us	96¾ (2.766%)	96½ (2.984%)

They think that if this is for long term use in our business we should take this opportunity to get 20-year money.

They think Socony did not make a very good deal with the insurance companies because they are tied to a sinking fund which they will some day regret. On a public issue Socony would be able to supply the sinking fund agent at lower prices some day. Ewing feels we should be able to get Equitable down to today's market on our present \$25,000,000 and he does not expect to beat them out on a public issue; but for our \$60,000,000 of 3½'s (in which he feels our best interests would be served by putting ourselves in Morgan's hands) they

could save about \$278,000 per annum on new 15-year bonds (not including registration expense) and about \$150,000 per annum on the 20-year.

More later.

Sincerely yours,

(Original signed by S. W. Duhig.)

SWD-S.

If we want to sell the debentures at *par* it would take a coupon of about $\frac{1}{4}$ more.

EXHIBIT No. 2007

[From the files of Shell Union Oil Corporation]

[Copy of message]

SENT

To: Vanwood, London.
By: R. G. A. Van der Woude.

SGH 6589

NEW YORK, June 6th, 6.45 p. m., 1939.

PRIVATE

26 Re Shell Union finance bankers now indicate can replace present $3\frac{1}{2}\%$ debentures with 15 year $2\frac{1}{2}\%$ to sell at $98\frac{1}{2}$ to public and $96\frac{3}{4}$ to company or alternatively 20 year $2\frac{3}{4}\%$ debentures to sell at $98\frac{1}{2}$ to public and $96\frac{1}{2}$ to company stop

Saving on new 15 year issue is approximately \$190,000 per annum over remaining life of present issue after redemption premium and other costs stop

Saving on new 20 year issue is only nominal during remaining life of present issue but we consider lengthening of maturity at present rates highly desirable stop

Re \$25,000,000 life insurance loan Equitable have indicated willingness reduce interest by $\frac{1}{4}\%$ in exchange for bonus of \$125,000 which would effect net saving over period of loan of about \$600,000 fullstop

In line with present market money rates we should be able to do better and if they do not improve upon terms we intend refinance this loan by including in above mentioned public issue stop

Our idea proceed with 20 year issue through Morgan Stanley group with possibility further improvement in terms both as to selling price and bankers commission stop

In view risk of market changes and also Security & Exchange Commission requirement use of December 31st 1938 audited accounts limited to 6 months we are proceeding immediately preparation registration documents stop

We have discussed with Godber and Van Eck who agree stop

We have also discussed redemption of preference shares and if anything develops we will advise you later

Attention Mr. Van der Woude.

C. C. Messrs. Duhig, Fraser, Belither.

EXHIBIT No. 2008

[From the files of Shell Union Oil Corporation]

[Copy of message]

To: Vanwood London.

7497
PTW

By: R. G. A. van der Woude.

NEW YORK, June 26th, 1939.

PRIVATE

33 Your 14 Equitable advised us that their board has decided against making changes in existing agreements therefore only way open to us was to redeem loan and make new agreement fullstop

Accordingly we offered them basis for new agreement about equal to what we can obtain by public issue fullstop

They turned this down and as it was clear that we could not come to even a satisfactory compromise with them we have decided to call their loan upon issuance \$85,000,000 public money fullstop

Terms agreed upon with Morgan Stanley are as follows: \$85,000,000 fifteen years 2½ percent interest issue price 98½ commission 1¾ percent with possibility of some reduction in latter fullstop

Sinking fund about 40 percent to commence in 1943 fullstop

Call price 102½ sliding downwards periodically after July 1944 fullstop.

You understand of course that under S. E. C. regulations not possible make firm agreement until issue ready for marketing therefore issue price is subject to change either way according to market conditions at that time fullstop

We expect file registration statement on Thursday and expect closing date to be 25th July with possibility 19th July fullstop

With regard to preferred issue matter is still under study by Morgan Stanley who fully understand and appreciate our strong desire to convert our present preferred stock into lower dividend stock and we assure you matter is having every possible attention and hope advise you shortly more definitely fullstop

Reference your 14 management your understanding is entirely correct full stop

(Balance of cable re filling vacancy on Shell Union Board.)

EXHIBIT No. 2009

[From the files of Shell Union Oil Corporation]

[Copy of message sent]

To: Vanwood, London.

By: R. G. A. van der Woude.

NEW YORK, July 13, 1939.

37 Our 33 underwriting agreement due be executed seventeenth July after which issue will become effective fullstop

Morgan Stanley discussed with us today final terms based on present market conditions and general reaction they received from underwriters and prospective large buyers fullstop

Response from latter has been disappointing and contrary to expectations entertained by Morgan Stanley fullstop

Apparently due mainly to weaker Government bond market and resistance against 2½% rate this being first issue at this new low rate and to some extent due to remembrance limited success our last issue fullstop

Under circumstances Morgan Stanley of opinion successful issue cannot be made at better than 97½ with commission 1½% other terms unchanged full stop

Judging from discussions doubt whether can hold out much hope obtaining better terms though of course after receiving your views we would try to do so fullstop

Total saving on above terms would be reduced to about \$3,000,000 over the 15-year period fullstop

If we decide not to accept above terms we could keep registration statement alive by amendments twenty days at the time though dont know for how long SEC would allow this fullstop

Of course there is no way predicting whether market conditions in future would enable us do better fullstop

In this connection should bear in mind unfavorable outlook oil industry near future and our own reduced earnings which might make it difficult make issue later even if bond market should be more favorable full stop

Total cost incurred in connection with registration statements legal advice etc. about \$100,000 fullstop.

Our own inclination would ordinarily be to hold out for 98 but we doubt whether it is really case of bargaining and believe Morgan Stanley sincere in their opinion issue could not at present be successful at higher than 97½ and therefore would not undertake issue at higher rate fullstop

We must take decision by tomorrow noon and would appreciate your telephoning me tomorrow morning in good time fullstop

Have discussed over telephone with Van Eck who is of opinion we should not postpone especially view uncertain outlook and he suggests I should ask you leave me discretion accept above terms if I find it impossible improve upon same
Attention: Mr. van der Woude.

EXHIBIT No. 2010

[From the files of Shell Union Oil Corporation]

To: S. Belither, Shell Oil Co. Inc., San Francisco, Calif. 8367-AJ
By: R. G. A. van der Woude. NEW YORK, 125p July 17th, 1939.
Signed underwriting agreement this morning at 97¾ with ½% commission¹
Please advise Van Eck.
Att: Mr. R G A van der Woude

¹ Testimony indicates that this telegram should read "... with 1½% commission. . .
See pp. 12649-12650.

EXHIBIT No. 2011

\$85,000,000 SHELL UNION OIL CORPORATION FIFTEEN YEAR 2½% DEBENTURES

Dated July 1, 1939

Due July 1, 1954

CONTRACT—July 17, 1939

MORGAN STANLEY & Co., INCORPORATED

2 Wall Street, New York, N. Y.

JULY 17, 1939.

DEAR SIRS: Shell Union Oil Corporation (hereinafter called the Company) proposes to issue \$85,000,000 principal amount of its Fifteen Year 2½% Debentures (hereinafter called the Debentures) to be dated July 1, 1939, to mature July 1, 1954, and to be issued pursuant to the provisions of a Trust Agreement dated July 1, 1939 between the Company and Irving Trust Company, Trustee.

I

The Company represents and warrants to each Underwriter hereinafter mentioned that:

(a) It has prepared and properly filed with the Securities and Exchange Commission in Washington, D. C., a Registration Statement and amendments thereto, a Prospectus and an amended Prospectus and has prepared and is about to file certain further amendments to the Registration Statement and a further amended Prospectus and has prepared a Newspaper Prospectus for use by the Underwriters in advertising the Debentures in connection with their original offering. The Registration Statement as amended and to be amended, including financial statements and exhibits, is hereinafter referred to as the Registration Statement and the further amended Prospectus, above referred to, is hereinafter referred to as the Prospectus. No further amendments to the Registration Statement or Prospectus shall be made unless copies thereof have theretofore been furnished to you and you shall not have objected thereto.

(b) When the Registration Statement becomes effective, the Registration Statement, the Prospectus and the Newspaper Prospectus will fully comply with the provisions of the Securities Act of 1933, as amended, and the Rules and Regulations of the Securities and Exchange Commission, and the Registration Statement and the Prospectus will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and the Newspaper Prospectus will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in the light of the circumstances under which they are made when said Newspaper Prospectus is used in connection with advertising the Debentures, except that this representation and warranty does not apply to statements or omissions in the Registration Statement or the Prospectus or the Newspaper Prospectus made in reliance upon and in conformity with information furnished to the Company in writing by any Underwriter expressly for use therein.

II

The Company hereby agrees to sell to the several Underwriters named below (on whose behalf you are acting), severally and not jointly, and the several Underwriters named below, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agree to purchase from the Company, severally and not jointly, the principal amount of Debentures set forth opposite their respective names below, aggregating \$85,000,000 principal amount of Debentures, at 96¼% of their principal amount plus interest accrued thereon to the date of payment and delivery.

<i>Names</i>	<i>Amount</i>
Morgan Stanley & Co. Incorporated.....	\$10,000,000
Kuhn, Loeb & Co.....	5,000,000
Smith, Barney & Co.....	4,000,000
Harriman Ripley & Co., Incorporated.....	4,000,000
The First Boston Corporation.....	4,000,000
Blyth & Co., Inc.....	3,500,000
Lehman Brothers.....	3,500,000
Lee Higginson Corporation.....	3,000,000
Hayden, Stone & Co.....	3,000,000
Lazard Frères & Co.....	3,000,000
Domluick & Dominick.....	2,000,000
A. C. Allyn and Company, Incorporated.....	300,000
Bacon, Whipple & Co.....	250,000
Baker, Watts & Company.....	250,000
Becker, A. G. & Co. Incorporated.....	500,000
Biddle, Whelen & Co.....	300,000
Blair & Co. Inc.....	600,000
Blair, Bonner & Company.....	400,000
Bonbright & Company, Incorporated.....	1,500,000
Alex. Brown & Sons.....	400,000
Central Republic Company.....	500,000
E. W. Clark & Co.....	400,000
Clark, Dodge & Co.....	1,000,000
Coffin & Burr, Incorporated.....	500,000
Day, R. L. & Co.....	400,000
Dick & Merle-Smith.....	400,000
Eastman, Dillon & Co.....	400,000
Equitable Securities Corporation.....	300,000
Estabrook & Co.....	1,000,000
Ferris & Hardgrove.....	250,000
First of Michigan Corporation.....	250,000
Francis, Bro. & Co.....	250,000
Glore, Forgan & Co.....	900,000
Goldman, Sachs & Co.....	1,500,000
Graham, Parsons & Co.....	350,000
Hallgarten & Co.....	350,000
Harris, Hall & Company (Incorporated).....	600,000
Hayden, Miller and Company.....	400,000
Hemphill, Noyes & Co.....	750,000
Hilliard, J. J. B. & Son.....	250,000
Hornblower & Weeks.....	750,000
Hutton, W. E. & Co.....	1,250,000
Illinois Company of Chicago, The.....	250,000
Jackson & Curtis.....	500,000
Kalman & Company.....	250,000
Kean, Taylor & Co.....	400,000
Kidder, Peabody & Co.....	2,500,000
Ladenburg, Thalmann & Co.....	750,000
Laird, Bissell & Meeds.....	250,000
Mackubin, Legg & Company.....	250,000
Laurence M. Marks & Co.....	500,000
Merrill Lynch & Co. Inc.....	350,000
Merrill, Turben & Co.....	250,000
Mitchum, Tully & Co.....	300,000
F. S. Moseley & Co.....	1,250,000
G. M.-P. Murphy & Co.....	300,000

<i>Names</i>	<i>Amount</i>
W. H. Newbold's Son & Co.....	\$300,000
Paine, Webber & Co.....	500,000
Arthur Perry & Co. Incorporated.....	300,000
R. W. Pressprich & Co.....	500,000
Reinholdt & Gardner.....	250,000
Riter & Co.....	400,000
E. H. Rollins & Sons Incorporated.....	750,000
L. F. Rothschild & Co.....	600,000
Salomon Bros. & Hutzler.....	750,000
Schoellkopf, Hutton & Pomeroy, Inc.....	500,000
Schwabacher & Co.....	300,000
Scott & Stringfellow.....	250,000
Shields & Company.....	750,000
Smith, Moore & Co.....	250,000
William R. Staats Co.....	300,000
Starkweather & Co.....	250,000
Stern Brothers & Co.....	250,000
Stern, Wampler & Co. Inc.....	300,000
Stone & Webster and Blodget, Incorporated.....	750,000
Spencer Trask & Co.....	500,000
Tucker, Anthony & Co.....	600,000
Union Securities Corporation.....	1,000,000
G. H. Walker & Co.....	400,000
Weeden & Co.....	250,000
Wells-Dickey Company.....	300,000
White, Weld & Co.....	1,500,000
Whiting, Weeks & Stubbs Incorporated.....	350,000
The Wisconsin Company.....	750,000
Dean Witter & Co.....	750,000
Total.....	<u>\$85,000,000</u>

III

The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Debentures part thereof directly to the public at 97½% of the principal amount of the Debentures—the public offering price—and accrued interest to the date of payment and delivery, and the balance to dealers at the public offering price, and accrued interest to the date of payment and delivery, less a concession of ½% of the principal amount of the Debentures so sold. The form of the proposed agreements with such dealers is attached hereto as Exhibit 1.

The Company authorizes the Underwriters and dealers to whom the Debentures may be sold by you on behalf of the Underwriters and all other dealers acquiring Debentures to use the Prospectus (as supplemented or amended if the Company shall have furnished any supplements or amendments thereto) in connection with the sale of the Debentures for a period of one year after the first date of the public offering of the Debentures.

The Company authorizes the Underwriters to advertise the Debentures in the manner permitted by the Rules and Regulations of the Securities and Exchange Commission by means of the Newspaper Prospectus.

Payment for the Debentures which the Underwriters severally agree to purchase shall be made by or for the accounts of the several Underwriters to the Company or its order by certified check in New York Clearing House funds at the office of J. P. Morgan & Co., 23 Wall Street, New York, N. Y., as such time, on or after July 24, 1939, but not later than July 28, 1939, as may be designated by you. Such payment shall be made upon delivery to you for account of the several Underwriters of the Debentures in temporary form, in the denomination of \$1,000 each, exchangeable in New York City for definitive Debentures without charge to the holders. The date and time of such payment and delivery are herein referred to as the closing date.

IV

The Company agrees that it will apply the net proceeds (exclusive of accrued interest) from the sale of the Debentures toward the redemption on or before September 1, 1939 of (a) \$57,427,000 principal amount of Shell Union Oil

Corporation Fifteen-Year 3½% Debentures, due March 1, 1951, at 102½% of the principal amount thereof (\$58,862,675) and (b) \$25,000,000 principal amount of Shell Union Oil Corporation Fifteen year 3% Sinking Fund Debentures, due June 1, 1953, at 104% of the principal amount thereof (\$26,000,000). On the closing date, the Company, for the purposes of such redemption, will deposit in trust with the respective trustees or paying agents an amount in cash equivalent to the full redemption prices, including interest to the redemption dates, of said Fifteen-Year 3½% Debentures, and of said Fifteen Year 3% Sinking Fund Debentures.

V

The several obligations of the Underwriters hereunder are subject to the following conditions:

(a) The Registration Statement shall have become effective not later than July 18, 1939, and no stop order suspending the effectiveness thereof shall have been issued on or prior to the closing date, and no proceedings for that purpose shall have been commenced or, to the Company's knowledge, be about to be commenced by the Securities and Exchange Commission on or prior to the closing date other than proceedings which may have been disposed of by that date in a manner satisfactory to you; and you shall have received, prior to payment by the Underwriters for the Debentures:

(i) a certificate, dated the closing date, signed by the President or a Vice-President of the Company, to the effect that no such stop order has been issued and that no proceedings for such purpose have been so taken or, to the Company's knowledge, are about to be commenced, other than proceedings which may have been disposed of in a manner satisfactory to you;

(ii) an opinion or opinions of Messrs. Davis Polk Wardwell Gardiner & Reed, counsel for the Underwriters, to the effect that (1) proper corporate proceedings have been taken so that the Trust Agreement is a valid and binding instrument in accordance with its terms, the Debentures have been validly authorized, and when duly executed by proper officers of the Company, duly authenticated by the Trustee, and delivered and paid for, will be validly issued and outstanding, and (2) the Registration Statement, the Prospectus and any supplements or amendments thereto and the Newspaper Prospectus comply with the Securities Act of 1933, as amended, and the Rules and Regulations of the Securities and Exchange Commission thereunder;

(iii) an opinion or opinions, satisfactory to counsel for the Underwriters, of Messrs. Wickes, Nelson & Riddell, counsel for the Company, to the same effect as the opinion or opinions of Messrs. Davis Polk Wardwell Gardiner & Reed referred to in (ii) above, and further to the effect that (1) the Company has been duly incorporated and is on the closing date validly existing under the laws of the State of Delaware, and (2) neither the Company nor any subsidiary is a "public utility", a "gas utility", or a "holding company" within the meaning of the Public Utility Holding Company Act of 1935; and that the consent or order of no state commission or other governmental body is required for the valid creation or issuance of the Debentures or the valid execution and delivery of the Trust Agreement or that all such consents or orders required have been obtained;

(iv) a certificate, dated the closing date, signed by the President or a Vice-President of the Company, to the effect that there has been no material change in the condition of the Company, or of its subsidiaries, from the condition set forth in the Registration Statement and the Prospectus, other than changes arising from transactions in the ordinary course of business.

(b) The representations and warranties of the Company herein shall be true and correct and the Company shall not have failed on or prior to the closing date to have performed all agreements herein contained which should have been performed on its part at or prior to such date.

VI

In further consideration of the agreements of the Underwriters herein contained, the Company covenants as follows:

(a) As soon as the Company is advised thereof, to advise you, and confirm the advice in writing, (1) when the Registration Statement has become effective and (2) of the issuance by the Securities and Exchange Commission of any stop order suspending the effectiveness of the Registration Statement or of the initiation of any proceedings for that purpose.

(b) To deliver to each of the Underwriters without charge on or before the effective date of the Registration Statement, and from time to time thereafter

during the period of one year from the first date of the public offering of the Debentures so many copies of the Prospectus (as supplemented or amended if the Company shall have made any supplements or amendments thereto) as you may reasonably request.

(c) To deliver to you without charge 175 copies of the Registration Statement (including financial statements and exhibits) and of any amendments thereto.

(d) Before filing any amendments to the Registration Statement after it has become effective or before making any amendments or supplements to the Prospectus, to furnish you with a copy of such proposed amendments or supplements.

(e) For a period of one year after the first date of the public offering of the Debentures, if any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, forthwith to prepare and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to whom Debentures may have been sold by you on behalf of the Underwriters and, upon request, to any other dealers making such request, either amendments to the Prospectus or supplemental information so that the statements in the Prospectus as so amended and supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading.

(f) To make generally available to the Company's security holders as soon as practicable an earning statement covering a period of twelve months beginning on the first day of the calendar month after the effective date of the Registration Statement, which earning statement shall satisfy the provisions of Section 11 (a) of the Securities Act of 1933, as amended.

(g) So long as any of the Debentures shall remain outstanding, to publish annually consolidated income statements, balance sheets and statements of summary of changes in surplus of the Company and its subsidiaries consolidated, all such statements to be audited by independent public accountants.

(h) To make application for the listing of the Debentures on the New York Stock Exchange and for their registration under the Securities Exchange Act of 1934.

(i) To endeavor to qualify the Debentures for offer and sale under the securities or Blue Sky laws of such States as you shall request in writing.

(j) To indemnify and hold harmless each of the Underwriters and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended, and each and all and any of them against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act of 1933, as amended, or at common law, and except as hereinafter provided, to reimburse each of the Underwriters and each such controlling person for any legal or other expenses incurred by it or them in connection with defending any actions, in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in the Prospectus (if used within one year after the first date of the public offering of the Debentures and as supplemented or amended if the Company shall furnish to the Underwriters any supplements or amendments thereto) or in the Newspaper Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any such untrue statement or omission or alleged untrue statement or omission, which was made in such Registration Statement, or Prospectus or Newspaper Prospectus in reliance upon information furnished in writing to the Company by any Underwriter expressly for use therein. Each Underwriter agrees that, promptly upon receipt of notice of the commencement of any action against such Underwriter or against any person so controlling such Underwriter in respect of which indemnity or reimbursement may be sought from the Company on account of its agreement contained in this paragraph, notice will be given to the Company in writing of the commencement thereof, but the omission so to notify the Company of any such action shall not release the Company from any liability which it may have to such Underwriter or to any such controlling person otherwise than on account of the indemnity agreement contained in this paragraph. In case any such action shall be brought against any Underwriter or against any such controlling person and notice shall be given to the Company of the

commencement thereof, the Company shall be entitled to participate in, and, to the extent that it shall wish, including the selection of counsel, to direct, the defense thereof at its own expense. Any Underwriter or any such controlling person shall have the right to employ its or their own counsel although the Company has so selected counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless the employment of such counsel has been authorized by the Company in connection with defending such action.

Each Underwriter agrees to indemnify and hold harmless the Company against any and all losses, claims, damages or liabilities, joint or several, to which it may become subject under the Securities Act of 1933, as amended, or at common law, and to reimburse the Company for any legal or other expenses incurred by it in connection with defending any actions, in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in the Prospectus (if used within one year after the first date of the public offering of the Debentures and as supplemented or amended if the Company shall furnish to the Underwriters any supplements or amendments thereto) or in the Newspaper Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, which untrue statement or omission or alleged untrue statement or omission was made in such Registration Statement, or Prospectus or Newspaper Prospectus in reliance upon information furnished in writing to the Company by such Underwriter expressly for use therein. The Company agrees promptly upon receipt of notice of the commencement of any action against the Company in respect of which indemnity or reimbursement may be sought from an Underwriter on account of its agreement contained in this paragraph, to notify such Underwriter in writing of the commencement thereof, but the omission of the Company so to notify such Underwriter of any such action shall not release such Underwriter from any liability which it may have to the Company otherwise than on account of the indemnity agreement contained in this paragraph. In case any such action shall be brought against the Company and the Company shall notify an Underwriter from whom indemnity or reimbursement may be sought on account of its agreement contained in this paragraph of the commencement thereof, such Underwriter shall be entitled to participate in and, to the extent that it shall wish, including the selection of counsel, to direct, the defense thereof at its own expense. The Company shall have the right to employ its own counsel although the Underwriter has so selected counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company unless the employment of such counsel has been authorized by the Underwriter in connection with defending such action.

The indemnity agreements contained in this Article VI (j) and the representations and warranties of the Company in this Agreement set forth shall remain operative and in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriter or controlling person or by or on behalf of the Company and (c) acceptance and payment hereunder for the Debentures.

VII

This Agreement shall become effective when the Registration Statement becomes effective and until such time this Agreement may be terminated by the Company, by notifying you at your office, 2 Wall Street, New York, N. Y., or by such number of Underwriters who have in the aggregate agreed to purchase more than \$42,500,000 principal amount of the Debentures, by notifying the Company at its office, 50 West 50th Street, New York, N. Y. Any such notice may be in writing or by telegraph or by telephone and, if by telegraph or by telephone, shall be subsequently confirmed in writing.

If any of the Underwriters shall fail or refuse (whether for some reason sufficient to justify its cancellation or termination of its obligation to purchase hereunder or otherwise) to purchase the principal amount of the Debentures which it has hereunder agreed to purchase, the Company shall immediately notify the remaining Underwriters, at the respective addresses set forth in the Registration Statement, who may within twenty-four hours of receipt of such notice purchase or agree to purchase or procure some other responsible party or parties satisfactory to the Company to purchase or agree to purchase such

Debentures on the terms herein set forth; and if the remaining Underwriters fail to purchase or agree to purchase or to procure a satisfactory party or satisfactory parties to purchase or agree to purchase such Debentures on such terms within twenty-four hours of the receipt of such notice, then the Company shall be entitled to an additional period of twenty-four hours within which to procure another party or parties to purchase or agree to purchase such Debentures on the terms herein set forth. In any such case either you or the Company shall have the right to postpone the closing date from the date determined as provided in Article III hereof, but in no event to a date later than August 1, 1939, in order that necessary changes and arrangements may be effected by you and by the Company. If the remaining Underwriters fail to purchase or agree to purchase or to procure a satisfactory party or parties to purchase or agree to purchase such Debentures, and if the Company also does not procure another party or parties to purchase or agree to purchase such Debentures, within the aforesaid periods, then this Agreement may be terminated, either by the Company or by Underwriters who have in the aggregate agreed to purchase more than 50% of the principal amount of the Debentures other than the Debentures which one or more Underwriters shall have failed or refused to purchase. In the event of any such termination the Company shall not be under any liability to any Underwriter, nor shall any Underwriter (other than an Underwriter who shall have failed or refused to purchase Debentures without some reason sufficient to justify its cancellation or termination of its obligation hereunder) be under liability to the Company.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, or if the Company shall terminate this Agreement under the option contained in the first paragraph of this Article VII, the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all of their out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by them.

VIII

The Agreement herein set forth has been and is made solely for the benefit of the Underwriters and the Company, their successors and assigns, and, to the extent expressed, for the benefit of persons controlling Underwriters and of dealers purchasing Debentures, their successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include any purchaser of the Debentures merely because of such purchase.

Please confirm that the foregoing correctly sets forth the agreement between us.

Very truly yours,

SHELL UNION OIL CORPORATION,

By _____, *President.*

Confirmed July 17, 1939.

MORGAN STANLEY & Co., INCORPORATED,

By _____, *Vice-President.*

Acting severally on behalf of itself and the several Underwriters named herein.

EXHIBIT 1

MORGAN STANLEY & Co. INCORPORATED

Two Wall Street, New York

\$85,000,000 SHELL UNION OIL CORPORATION FIFTEEN YEAR 2½% DEBENTURES

Dated July 1, 1939

Due July 1, 1954

NEW YORK, July 19, 1939.

Dear Sirs:

We and the other Underwriters named in the Offering Prospectus have severally agreed to purchase, subject to the terms and conditions of our Purchase Agreement, at 96¼% of the principal amount thereof, and accrued

interest to the date of payment therefor, an aggregate of \$85,000,000 principal amount of Shell Union Oil Corporation (hereinafter called the Company) Fifteen Year $2\frac{1}{2}\%$ Debentures (hereinafter called the Debentures), to be dated July 1, 1939, and to mature July 1, 1954, and more fully described in the enclosed copy of the Offering Prospectus.

A part of the \$85,000,000 principal amount of the Debentures is being offered for sale, when, as and if issued and accepted by the several Underwriters and subject to the approval of their counsel and to the other terms and conditions hereof, to dealers at $97\frac{3}{4}\%$ of the principal amount thereof—the public offering price—and accrued interest, less a concession of $\frac{1}{2}\%$, payable as hereinafter provided. No deduction from this concession will be made for expenses. Out of the above-stated concession of $\frac{1}{2}\%$, dealers may allow a concession not in excess of $\frac{1}{8}\%$ to brokers or dealers only, provided that such concession is not reallocated to a customer in any case.

We are advising you by telegram of the principal amount of Debentures reserved for purchase by you, subject to the terms and conditions hereof. Such Debentures will be reserved for purchase by you until 4 o'clock P. M. (standard time in your city), Wednesday, July 19, 1939. Please advise us at our office, 2 Wall Street, New York City, by the time specified, whether or not you agree to purchase, on the terms and conditions hereof, all or any part of such reserved Debentures. Applications for Debentures in excess of the amount so reserved and applications received after 4 o'clock P. M. (standard time in the applicant's city), Wednesday, July 19, 1939, will be received only subject to allotment by us in our uncontrolled discretion.

We have been advised by the Company that a Registration Statement in respect of these Debentures under the Securities Act of 1933, as amended, has become effective. Neither you nor any other person is authorized by the Company or by the Underwriters to give any information or make any representations, other than those contained in the Offering Prospectus, in connection with the issue and sale of the Debentures. No dealer is authorized to act as agent for the several Underwriters when offering the Debentures to the public or otherwise. The Company has agreed with the Underwriters that for a period of one year after the first date of the public offering of the Debentures, if any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, forthwith to prepare and furnish, at its own expense, to the Underwriters and to the dealers to whom Debentures may have been sold by us on behalf of the Underwriters and, upon request, to any other dealers making such request, either amendments to the Prospectus or supplemental information so that the statements in the Prospectus as so amended and supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading.

You may offer the Debentures Wednesday morning, July 19, 1939, subject to the foregoing and to the above referred to conditions of the Purchase Agreement of the Underwriters. No dealer shall enter, either directly or indirectly, into any agreement or arrangement with any purchaser of the Debentures whereby such dealer accepts Shell Union Oil Corporation Fifteen-Year $3\frac{1}{2}\%$ Debentures dated March 1, 1936 and due March 1, 1951 or Shell Union Oil Corporation Fifteen Year $3\frac{3}{4}\%$ Sinking Fund Debentures, due June 1, 1953, (both of which issues the Company intends to redeem on or before September 1, 1939) in payment of all or any part of the purchase price of the Debentures at any price in excess of $102\frac{1}{2}\%$ for the $3\frac{1}{2}\%$ Debentures or $104\frac{1}{2}\%$ for the $3\frac{3}{4}\%$ Debentures and accrued interest in either case to the redemption date.

Public advertisement of the Debentures will be made July 19, 1939. After that date, you may advertise on your own responsibility over your own name and at your own expense. Additional copies of the Offering Prospectus will be supplied in reasonable quantities upon request.

The Debentures purchased by the Underwriters which are not being offered to dealers in accordance with the terms of this Agreement are being offered for sale by certain of the Underwriters, all of whom have agreed with respect to the sale of Debentures to comply with the terms and conditions of this Agreement. All of such Underwriters have agreed that they will not sell or offer to sell or solicit offers to buy Debentures prior to the public offering.

Payment for Debentures purchased by you is to be made by certified check at the office of J. P. Morgan & Co., 23 Wall Street, New York City, at the public offering price, and accrued interest to the date of payment therefor, on July 24,

1939, or such later date as we may advise, in New York Clearing House funds to the order of Morgan Stanley & Co. Incorporated, against delivery of temporary Debentures. The concession to which you shall be entitled will be paid to you upon the termination of this Agreement. Notwithstanding the distribution of any such amount to you, you agree to pay your proportionate share of any claim, demand or liability asserted against you and the other dealers to whom Debentures are sold in accordance with the terms of this Agreement or any of them, or against us as Manager of the offering, based on the claim that such dealers constitute an association, unincorporated business or other separate entity.

In the event that prior to the termination of this Agreement (or prior to such earlier date as we may determine), we purchase for the account of any of the several Underwriters, in the open market or otherwise, at or below the public offering price, any Debentures delivered to you, we reserve the right to withhold the above-mentioned concession on such Debentures.

This Agreement will terminate on September 23, 1939, unless sooner terminated by us.

As Manager of the offering, we shall have full authority to take such action as we may deem advisable in respect of all matters pertaining to the offering. As Manager, we shall be under no liability to you for or in respect of the validity of, or the form of, or the representations contained in, the Debentures or the Registration Statement or the Offering Prospectus or the Newspaper Prospectus or the Agreement with the Company for the purchase of the Debentures or other instruments executed by the Company or by others; or for the delivery of the Debentures or the performance by the Company or by others of any agreement on its or their part; or for the qualification of the Debentures for sale under the laws of any jurisdiction; or for any matter connected with this Agreement, except for lack of good faith and for obligations expressly assumed by us in this Agreement. This offer of Debentures to dealers is made in each state only by such of the Underwriters as may lawfully sell the Debentures to dealers in such state.

Each of the several Underwriters has authorized us for its account, during the term of agreements between us and the several Underwriters (which agreements will terminate thirty days after the termination of this Agreement, or on such earlier date as we may determine), (1) to buy and to sell Debentures, in addition to the Debentures sold to dealers pursuant to the terms of this Agreement, in the open market or otherwise, for either long or short account, on such terms and at such prices as we may deem desirable, and (2) in arranging for sales to dealers pursuant to the terms of this Agreement to over-allot, it being understood that such purchases and sales and over-allotments shall be made for the account of each of the several Underwriters as nearly as practicable in proportion to the respective principal amounts of Debentures which the Underwriters severally have agreed to purchase from the Company; provided, however, that at no time shall the net commitment of any Underwriter under such provisions of said agreements, for either long or short account, exceed 10% of the principal amount of Debentures which any such Underwriter has agreed to purchase from the Company.

Each of the several Underwriters reserves the right to make purchases and sales of the Debentures in the ordinary course of business, and not for the purpose of stabilizing the price of any security, for its own account, in the open market or otherwise, for either long or short account.

Please advise us whether or not you agree to purchase all or any part of the Debentures reserved for you, and if you so agree please confirm your purchase by signing, in the manner indicated on the reverse hereof, and returning to us the duplicate copy of this letter enclosed herewith.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By _____

MORGAN STANLEY & CO., INCORPORATED

2 Wall Street, New York, N. Y.

DEAR SIRS: We hereby confirm our purchase of \$ _____ principal amount of Shell Union Oil Corporation Fifteen Year 2½% Debentures, due July 1, 1954, reserved firm for us in accordance with all the terms and conditions stated in the foregoing letter and in your telegram setting forth the amount of Debentures reserved for purchase by us. We hereby acknowledge receipt of the Offering Prospectus dated July 19, 1939, relating to the above Debentures and we

further state that in purchasing these Debentures, we have relied upon said Offering Prospectus and on no other statements whatsoever, written or oral.

By _____
 _____ Address

Dated, July __, 1939.

"EXHIBIT No. 2012," appears in full in the text, p. 12650.

EXHIBIT No. 2013-1

STIPULATION

It is hereby stipulated and agreed that the memorandum dated March 10, 1937, written by Mr. H. M. Addinsell, with reference to Shell Union Oil Company, is a true copy of an original document in the files of The First Boston Corporation, and that the said document was furnished to a duly authorized representative of the Temporary National Economic Committee.

ARTHUR DEAN,
 SULLIVAN & CROMWELL,
Counsel to the First Boston Corp.

EXHIBIT No. 2013-2

[From the files of The First Boston Corporation]

(Hand written:) \$85,000,000 2½%—Due '54 Guide—"Memoranda."

SHELL UNION OIL COMPANY

I lunched today with Mr. Mathey of Dillon Read who advised me that the Shell Union Oil Company proposes to issue \$60,000,000 convertible preferred stock, the existing preferred stockholders having the first call to the extent of the amount outstanding: namely \$38,000,000.

The company is having preliminary conversations with Dillon Read & Co. on behalf of the old syndicate, which will be substantially the same although for certain reasons Lee Higginson will be managers of the account along with Dillon Read and Hayden Stone. The company has advised Mr. Mathey they would like to see a 4% preferred stock with a conversion beginning at 40, and Mr. Mathey asked my opinion as to whether this could be done, to which I definitely replied in the negative. He agreed to this and said he thought that if the company would make a 4½% preferred and make it convertible for the first two years right close to the market (33) at, say, 35 he thought it would be doable at a price depending on conditions at the time the issue came out at somewhere between par and 105. I indicated that I thought a 4½% preferred with a conversion right close to the market should be doable at an appropriate price, depending on market conditions at the time. If the negotiations go forward the issue would probably not come for at least six weeks.

Having in mind the tremendous trading proclivities of the management and the experience with the debenture issue, Mr. Mathey is determined to avoid being crowded up by the company with regard to the terms of the set-up and the price. He feels, especially in view of the fact that the Shell is not as favorably regarded as some of the other oil companies in spite of what he says is its better statistical position as compared, for example, with Texas and Tide Water, and in view of his experience with the note issue, that it is absolutely essential to a successful offering that it be put out on an obviously attractive basis.

He is sure that the company will be shocked at the proposal he has in mind making, and that their first impulse will be to try to go somewhere else. You will recall that the syndicate in the last issue was a pretty comprehensive one and he thinks that the only possible place they might go to is Kuhn Loeb, and there are probably reasons why they would not go even to them. He is anxious,

however, to have his group present a solid front to the company and, in effect, to agree that if the Shell Union does not trade with the Dillon Read-Hayden Stone-Lee Higginson group, the members of this group will not join any other bankers who may attempt to form a group to figure on the business. In view of the well-known trading proclivities of the Shell people, I have agreed in principle to Mr. Mathey's suggestion on the theory that if our large and strong group cannot get the business on terms that we feel attractive, we will be better off to be out of the business.

H. M. ADDINSELL.

March 10th 1937.

EXHIBIT No. 2014

[Letter from Morgan Stanley & Co., Incorporated, to Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

MORGAN STANLEY & CO., INCORPORATED

Two Wall Street, New York

NEW YORK, November 20, 1939.

PETER R. NEHEMKIS, Jr., Esq.

*Special Counsel, Investment Banking Section, Monopoly Study,
Securities and Exchange Commission, Washington, D. C.*

DEAR MR. NEHEMKIS: In the absence of Mr. Stanley from the office, I wish to acknowledge your letter to him of November 15th. As requested in the first paragraph of your letter, I am enclosing a memorandum giving a transcript of the record of purchases and sales by Morgan Stanley & Co. Incorporated of Shell Union Oil Corporation 3½% Debentures due 1951 from March 11, 1936.

With respect to the information requested in the second paragraph of your letter, I wish to advise that this information was given to Mr. McEldowney in a memorandum attached to Mr. Stanley's letter of October 4, 1939 and was supplemented in my letter to Mr. McEldowney of October 6, 1939.

Very truly yours,

PERRY HALL, *Vice President.*

Enclosure.

SHELL UNION OIL CORPORATION—15 YEAR 3½% DEBENTURES DUE 3/1/51

DEBIT

March 11, 1936: Bought from Company \$5,000,000 Bonds @ 97%----- \$4, 850, 000

CREDIT

March 11, 1936 Sold by Dillon, Read & Co., \$1,700,000 Bonds @ 99%		
less 1¼% -----		\$1, 661, 750
March 17, 1936 Sold by Dillon, Read & Co. \$30,000 Bonds @ 99%		
less 1¼% -----		29, 325
April 20, 1936 Sold by us direct \$500,000 Bonds @ 95½% -----		477, 500
May 13, 1936 " " " " 250,000 " @ 95¾% -----		239, 375
May 14, 1936 " " " " 250,000 " @ 95¾% -----		239, 375
May 15, 1936 " " " " 710,000 " @ 95¾% -----		679, 825
May 18, 1936 " " " " 1,560,000 " @ 95¾% -----		1, 493, 700
Proceeds-----		\$4, 820, 850
Loss -----		29, 150
Less:		
Expenses-----	\$1, 429. 74	
Cost of Documentary Tax Stamp-----	2, 000. 00	
Loss in trading-----	175. 84	3, 605. 58
Gross loss-----		32, 755. 58

MORGAN STANLEY & CO., INCORPORATED.
By PERRY HALL.

EXHIBIT No. 2015

\$85,000,000 SHELL UNION OIL CORPORATION FIFTEEN YEAR 2½% DEBENTURES

*Dated July 1, 1939**Due July 1, 1954*

UNDERWRITING AGREEMENTS, JULY 17, 1939

MORGAN STANLEY & Co., INCORPORATED

2 Wall Street, New York, N. Y.

JULY 17, 1939.

DEAR SIRs: We wish to confirm as follows our agreement with you with respect to the purchase by you and the other Underwriters hereinafter referred to, including ourselves, severally, and the offering of an aggregate of \$85,000,000 principal amount of Fifteen Year 2½% Debentures (hereinafter called the Debentures), to be dated July 1, 1939, and to mature July 1, 1954, of Shell Union Oil Corporation (hereinafter called the Company):

I

We authorize you to execute on our behalf the agreement annexed hereto as Exhibit A (hereinafter referred to as the agreement with the Company).

II

We authorize you, with respect to the Debentures which we agree to purchase from the Company, to reserve for sale and to sell on our behalf any or all of such Debentures to dealers, in such amounts as you shall in your discretion determine, in accordance with the terms and conditions of agreements with such dealers in the form attached hereto as Exhibit 1. It is understood that on the date of the public offering you will advise us of the amount of Debentures purchased from the Company by us which you have not reserved for sale to dealers.

We authorize you to act as the Manager of the offering and to take such action as may seem advisable to you in respect of all matters pertaining to the offering to dealers or the public offering of the Debentures. We agree that the public offering of the Debentures is to be made on July 19, 1939, or as soon thereafter as in your judgment is advisable, at the public offering price set forth in the agreement with the Company, and accrued interest. We agree that, with respect to the sale of Debentures by us, we will comply with all the terms and conditions set forth in Exhibit 1 attached hereto, and will not sell, offer to sell, or solicit offers to buy Debentures prior to the public offering.

III

At 9:15 o'clock A. M., New York City Time, on the closing date, as defined in the agreement with the Company, we will deliver to you at the office of J. P. Morgan & Co., 23 Wall Street, New York, N. Y., a certified check payable to the order of the Company in New York Clearing House funds, for the full purchase price of the Debentures which we have agreed to purchase from the Company, which full purchase price shall be paid to the Company against delivery to you for our account of such Debentures in temporary form. You agree promptly to deliver to us such of the Debentures purchased by us as you have not reserved for sale to dealers for our account as provided in Article II hereof. Upon receipt by you of payment for Debentures purchased by us and sold to dealers for our account, you will remit to us out of the payments so received an amount equivalent to the purchase price paid by us for such Debentures, plus accrued interest, received upon such payment. You may deliver to us from time to time on or after the closing date, for carrying purposes only, any Debentures purchased by us which are reserved for sale for our account to dealers but not purchased by them or which are so reserved and purchased but with respect to the purchase of which default is made. Any Debentures delivered to us for carrying purposes will be redelivered to you at such time or times as you may demand, either for delivery to dealers, or for disposition under Articles VI or VIII hereof.

IV

As compensation for your services in connection with the purchase of the Debentures and the managing of the public offering and the offering to dealers,

we agree to pay you on the closing date an amount equal to $\frac{1}{4}\%$ of the principal amount of the Debentures which we have agreed to purchase from the Company.

V

We agree to pay and authorize you to charge to our account our proportionate share of all expenses, other than transfer taxes, incurred by you under the terms of this Agreement or in connection with the purchase, carrying and sale of the Debentures. Such expenses shall be charged to and paid by the several Underwriters in proportion to the principal amount of Debentures which each has agreed to purchase from the Company. We agree to pay and authorize you to charge to our account all transfer taxes paid on our behalf on sales or transfers made for our account pursuant to any provisions of this Agreement.

You shall not be under any duty to account for any interest on funds of any of the Underwriters, including ourselves, at any time in your hands.

VI

We authorize you for our account during the term of this Agreement (1) to buy and to sell Debentures, in addition to the Debentures sold to dealers pursuant to Article II hereof, in the open market or otherwise, for either long or short account, on such terms and at such prices as you shall deem desirable, and (2) in arranging for sales of Debentures to dealers pursuant to the provision of this Agreement to over-allot, it being understood that such purchases and sales and over-allotments shall be made for the account of each of the several Underwriters as nearly as practicable in proportion to the respective principal amounts of Debentures which the Underwriters severally agree to purchase from the Company, and we agree to take up at cost on demand any Debentures so purchased for our account and to deliver on demand any Debentures so sold or so over-allotted for our account; provided, however, that at no time shall our net commitment pursuant to such purchases and sales and over-allotments, for either long or short account, exceed 10% of the principal amount of Debentures which we have agreed to purchase from the Company. Without limiting the generality of the foregoing, it is understood that you may buy or take over for the accounts of the several Underwriters under this Agreement, all in the proportion and within the limits above set forth, at the public offering price and accrued interest less an amount equal to $\frac{1}{2}\%$ of the principal amount of the Debentures, any Debentures of any Underwriter reserved for sale to dealers but not purchased by them or so reserved and purchased but with respect to the purchase of which default is made.

You agree to notify us if you engage in any transaction pursuant to the authorization contained in the preceding paragraph of this Article.

We authorize you on our behalf to file with the Securities and Exchange Commission any and all reports required by Rule X-17A-2 to be filed with that Commission in connection with any purchases or sales made by you for our account pursuant to the authorization contained in this Article.

Each of the several Underwriters reserves the right to make purchases and sales of the Debentures in the ordinary course of business, and not for the purpose of stabilizing the price of any security, for its own account in the open market or otherwise, for either long or short account.

VII

In respect of any Debentures purchased by you for the account of any of the Underwriters pursuant to the provisions of Article VI hereof prior to the termination of the agreements with dealers or prior to such earlier date as you may determine, at or below the public offering price, which Debentures were sold by us otherwise than through you, we authorize you to charge to our account an amount equal to $\frac{1}{2}\%$ of the principal amount of said Debentures, which amount shall be credited on the accounts of the respective Underwriters for whose accounts said Debentures were purchased by you, against the cost of said Debentures.

VIII

The agreements with dealers (Exhibit 1) shall terminate at the close of business on September 23, 1939, unless sooner terminated by you. This Agreement shall terminate 30 days after the termination of the agreements with dealers or at such earlier date as you may determine, provided, however, that no such termination of this Agreement shall terminate or otherwise alter or affect our rights

and obligations under Article X hereof. Upon termination of this Agreement the accounts arising pursuant hereto shall be settled and paid. The determination by you of the amounts to be paid to or by us shall be final and conclusive.

Any Debentures reserved for sale to dealers pursuant to Article II hereof but not purchased by them and any Debentures so reserved and purchased but with respect to the purchase of which default is made, shall, upon the termination of this Agreement, and may, in your discretion, from time to time prior thereto, be delivered to the Underwriters, as nearly as practicable in proportion to the principle amount of Debentures which each severally has agreed to purchase from the Company, against payment to you for the respective accounts of the owners of such Debentures by each Underwriter of the public offering price and accrued interest less an amount equal to $\frac{1}{2}\%$ of the principal amount of such Debentures, and we agree to take up and pay for all Debentures so delivered to us and you agree to pay us any amount so paid to you for our account in respect of any Debentures owned by us.

Notwithstanding any settlement on the termination of this Agreement, we agree to pay our proportion (such proportion to be that which the principal amount of Debentures which we have agreed to purchase from the Company bears to \$85,000,000) of the amount of any claim, demand or liability which may be asserted against and discharged by the Underwriters, or any of them, based on the claim that the Underwriters constitute an association, unincorporated business or other separate entity, and also to pay any transfer taxes which may be assessed and paid after such settlement on account of any sale or transfer of Debentures for our account.

IX

Article V (a) of the agreement with the Company provides among other things that the several obligations of the Underwriters under said agreement are subject to the condition that the Registration Statement of the Company shall have become effective not later than July 18, 1939. You are hereby authorized in your discretion to extend such date to not later than July 19, 1939, and to execute on our behalf any supplementary agreement with the Company that may be necessary for such purpose.

We hereby confirm that we have examined the Registration Statement and amendments thereto and the Prospectus and amended Prospectus filed in respect of the Debentures and are familiar with the proposed further amendments to said Registration Statement, the proposed final amended Prospectus and the proposed Newspaper Prospectus (all referred to in the agreement with the Company), and that the information with respect to Underwriters contained in the Registration Statement as amended and as to be further amended, in the final amended Prospectus and in the proposed Newspaper Prospectus is correct and is not misleading in so far as it relates to us.

You shall be under no liability to us for or in respect of the form of, or the representations contained in, the Debentures or the Registration Statement, Prospectus or Newspaper Prospectus (all referred to in the agreement with the Company) or the agreement with the Company or other instruments executed by the Company or by others; or for the delivery of the Debentures or the performance by the Company or by others of any agreement on its or their part; or for the qualification of the Debentures for sale under the laws of any jurisdiction; or for any matter connected with this Agreement, except for lack of good faith and for obligations expressly assumed by you in this Agreement.

You are authorized in your discretion to approve on our behalf with approval of counsel for the Underwriters, any further amendments to the Registration Statement, Prospectus or Newspaper Prospectus which may be made prior to the effective date of the Registration Statement.

X

We agree to indemnify and hold harmless each other Underwriter, including yourself, and each of the persons, if any, who controls any such Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended, and each and all and any of them against any and all losses, claims, damages or liabilities, joint or several, to which any such other Underwriter, or any such controlling person, may become subject under the Securities Act of 1933, as amended, or at common law, and to reimburse each such other Underwriter and each controlling person for any legal or other expenses incurred by it or them in connection with defending any actions, in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or

alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus (if used within one year after the first date of the public offering of the Debentures and as supplemented or amended if the Company shall furnish to the Underwriters any supplements or amendments thereto) or the Newspaper Prospectus (all referred to in the agreement with the Company) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, which untrue statement or omission or alleged untrue statement or omission was made in reliance upon information furnished in writing by us expressly for use therein. We authorize you to confirm to each other Underwriter that we agree to indemnify and hold harmless such other Underwriter and any person so controlling such Underwriter as set forth above. By confirming this Agreement you confirm that each other Underwriter, including yourself, severally agrees to indemnify and hold harmless ourselves and any person so controlling us in the same manner and to the same extent in respect of any such untrue statement or omission or alleged untrue statement or omission made in reliance upon information furnished in writing by such other Underwriter, including yourself, expressly for use in the Registration Statement or Prospectus or Newspaper Prospectus.

XI

If we shall terminate our agreement with the Company as permitted by the terms thereof, our obligations hereunder shall immediately cease and determine except the obligation to pay our proportionate share of all expenses, the obligation to pay transfer taxes on sales or transfers made for our account, any obligations incurred for our account under Article VI hereof and our obligations under Article X hereof. In the event of our failing or refusing to perform our agreement with the Company, whether for sufficient legal cause or otherwise, we shall immediately notify you. In case any other Underwriter shall notify you of its failure or refusal to perform its agreement with the Company, you shall immediately notify the remaining Underwriters, including ourselves, and such remaining Underwriters and yourselves shall have the right to purchase the Debentures which the Underwriter so failing or refusing to perform its agreement with the Company had agreed to purchase from the Company, in proportion to the principal amount of Debentures which each such remaining Underwriter agreed to purchase from the Company. If we elect to purchase any part of the Debentures of such other Underwriter under the provisions of this Article, we shall notify you within three hours of our receipt of your notice; and in the event that the other remaining Underwriters have not at the expiration of said three hours notified you that they will purchase all of the remaining Debentures which said other Underwriter had failed or refused to purchase, then you or the Company may obtain any other party or parties satisfactory to the Company to purchase such remaining Debentures. All Debentures purchased by us under the provisions of this Article shall be added, for all the purposes of this Agreement, to the principal amount which we have agreed to purchase from the Company.

Default by any one or more of the other Underwriters in respect of their several obligations under the agreement with the Company shall not release us from any of our obligations.

Nothing herein contained shall constitute us partners with you or with the other Underwriters and the obligations of ourselves and of each of the other Underwriters are several and not joint.

Any notice from you to us shall be deemed to have been duly given if mailed or telegraphed to us at the address stated below.

This Agreement is being executed by us and delivered to you in triplicate. Upon your receipt of identical agreements from each of the other Underwriters, please confirm this Agreement and return one copy to us. Your confirmation hereof shall constitute confirmation that you have entered into identical agreements with each of the other Underwriters.

Very truly yours,

Address _____

Confirmed July 17, 1939.

MORGAN STANLEY & CO. INCORPORATED

By _____

Vice-President.

EXHIBIT A

MORGAN STANLEY & CO. INCORPORATED

2 Wall Street, New York, N. Y.

JULY 17, 1939.

DEAR SIRs: Shell Union Oil Corporation (hereinafter called the Company) proposes to issue \$85,000,000 principal amount of its Fifteen Year 2½% Debentures (hereinafter called the Debentures) to be dated July 1, 1939, to mature July 1, 1954, and to be issued pursuant to the provisions of a Trust Agreement dated July 1, 1939 between the Company and Irving Trust Company, Trustee.

I

The Company represents and warrants to each Underwriter hereinafter mentioned that:

(a) It has prepared and properly filed with the Securities and Exchange Commission in Washington, D. C., a Registration Statement and amendments thereto, a Prospectus and an amended Prospectus and has prepared and is about to file certain further amendments to the Registration Statement and a further amended Prospectus and has prepared a Newspaper Prospectus for use by the Underwriters in advertising the Debentures in connection with their original offering. The Registration Statement as amended and to be amended, including financial statements and exhibits, is hereinafter referred to as the Registration Statement and the further amended Prospectus, above referred to, is hereinafter referred to as the Prospectus. No further amendments to the Registration Statement or Prospectus shall be made unless copies thereof have theretofore been furnished to you and you shall not have objected thereto.

(b) When the Registration Statement becomes effective, the Registration Statement, the Prospectus and the Newspaper Prospectus will fully comply with the provisions of the Securities Act of 1933, as amended, and the Rules and Regulations of the Securities and Exchange Commission, and the Registration Statement and the Prospectus will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and the Newspaper Prospectus will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in the light of the circumstances under which they are made when said Newspaper Prospectus is used in connection with advertising the Debentures, except that this representation and warranty does not apply to statements or omissions in the Registration Statement or the Prospectus or the Newspaper Prospectus made in reliance upon and in conformity with information furnished to the Company in writing by any Underwriter expressly for use therein.

II

The Company hereby agrees to sell to the several Underwriters named below (on whose behalf you are acting), severally and not jointly, and the several Underwriters named below, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agree to purchase from the Company, severally and not jointly, the principal amounts of Debentures set forth opposite their respective names below, aggregating \$85,000,000 principal amount of Debentures, at 96¼% of their principal amount plus interest accrued thereon to the date of payment and delivery.

<i>Names</i>	<i>Amount</i>
Morgan Stanley & Co. Incorporated.....	\$10,000,000
Kuhn, Loeb & Co.....	5,000,000
Smith, Barney & Co.....	4,000,000
Harriman Ripley & Co., Incorporated.....	4,000,000
The First Boston Corporation.....	4,000,000
Blyth & Co., Inc.....	3,500,000
Lehman Brothers.....	3,500,000
Lee Higginson Corporation.....	3,000,000
Hayden, Stone & Co.....	3,000,000
Lazard Frères & Co.....	3,000,000
Dominick & Dominick.....	2,000,000
A. C. Allen and Company, Incorporated.....	300,000

<i>Names</i>	<i>Amount</i>
Bacon, Whipple & Co.....	\$250,000
Baker, Watts & Company.....	250,000
A. G. Becker & Co., Incorporated.....	500,000
Biddle, Whelen & Co.....	300,000
Blair & Co., Inc.....	600,000
Blair, Bonner & Company.....	400,000
Bonbright & Company, Incorporated.....	1,500,000
Alex. Brown & Sons.....	400,000
Central Republic Company.....	500,000
E. W. Clark & Co.....	400,000
Clark, Dodge & Co.....	1,000,000
Coffin & Burr, Incorporated.....	500,000
R. L. Day & Co.....	400,000
Dick & Merle-Smith.....	400,000
Eastman, Dillon & Co.....	400,000
Equitable Securities Corporation.....	300,000
Estabrook & Co.....	1,000,000
Ferris & Hardgrove.....	250,000
First of Michigan Corporation.....	250,000
Francis, Bro. & Co.....	250,000
Glore, Forgan & Co.....	900,000
Goldman, Sachs & Co.....	1,500,000
Graham, Parsons & Co.....	350,000
Hallgarten & Co.....	350,000
Harris, Hall & Company (Incorporated).....	600,000
Hayden, Miller and Company.....	400,000
Hemphill, Noyes & Co.....	750,000
J. J. B. Hilliard & Son.....	250,000
Hornblower & Weeks.....	750,000
W. E. Hutton & Co.....	1,250,000
The Illinois Company of Chicago.....	250,000
Jackson & Curtis.....	500,000
Kalman & Company.....	250,000
Kean, Taylor & Co.....	400,000
Kidder, Peabody & Co.....	2,500,000
Ladenburg, Thalmann & Co.....	750,000
Laird, Bissell & Meeds.....	250,000
Mackubin, Legg & Company.....	250,000
Laurence M. Marks & Co.....	500,000
Merrill Lynch & Co. Inc.....	350,000
Merrill, Turben & Co.....	250,000
Mitchum, Tully & Co.....	300,000
F. S. Moseley & Co.....	1,250,000
G. M.-P. Murphy & Co.....	300,000
W. H. Newbold's Son & Co.....	300,000
Paine, Webber & Co.....	500,000
Arthur Perry & Co. Incorporated.....	300,000
R. W. Pressprich & Co.....	500,000
Reinholdt & Gardner.....	250,000
Riter & Co.....	400,000
E. H. Rollins & Sons Incorporated.....	750,000
L. F. Rothschild & Co.....	600,000
Salomon Bros. & Hutzler.....	750,000
Schoellkopf, Hutton & Pomeroy, Inc.....	500,000
Schwabacher & Co.....	300,000
Scott & Stringfellow.....	250,000
Shields & Company.....	750,000
Smith, Moore & Co.....	250,000
William R. Staats Co.....	300,000
Starkweather & Co.....	250,000
Stern Brothers & Co.....	250,000
Stern, Wampler & Co. Inc.....	300,000
Stone & Webster and Blodget, Incorporated.....	750,000
Spencer Trask & Co.....	500,000
Tucker, Anthony & Co.....	600,000
Union Securities Corporation.....	1,000,000

<i>Names</i>	<i>Amount</i>
G. H. Walker & Co.....	\$400,000
Weeden & Co.....	250,000
Wells-Dickey Company.....	300,000
White, Weld & Co.....	1,500,000
Whiting, Weeks & Stubbs Incorporated.....	350,000
The Wisconsin Company.....	750,000
Dean Witter & Co.....	750,000
Total.....	<u>\$85,000,000</u>

III

The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Debentures part thereof directly to the public at 97½% of the principal amount of the Debentures—the public offering price—and accrued interest to the date of payment and delivery, and the balance to dealers at the public offering price, and accrued interest to the date of payment and delivery, less a concession of ½% of the principal amount of the Debentures so sold. The form of the proposed agreements with such dealers is attached hereto as Exhibit 1.

The Company authorizes the Underwriters and dealers to whom the Debentures may be sold by you on behalf of the Underwriters and all other dealers acquiring Debentures to use the Prospectus (as supplemented or amended if the Company shall have furnished any supplements or amendments thereto) in connection with the sale of the Debentures for a period of one year after the first date of the public offering of the Debentures.

The Company authorizes the Underwriters to advertise the Debentures in the manner permitted by the Rules and Regulations of the Securities and Exchange Commission by means of the Newspaper Prospectus.

Payment for the Debentures which the Underwriters severally agree to purchase shall be made by or for the accounts of the several underwriters to the Company or its order by certified check in New York Clearing House funds at the office of J. P. Morgan & Co., 23 Wall Street, New York, N. Y., at such time, on or after July 24, 1939, but not later than July 28, 1939, as may be designated by you. Such payment shall be made upon delivery to you for account of the several Underwriters of the Debentures in temporary form, in the denomination of \$1,000 each, exchangeable in New York City for definitive Debentures without charge to the holders. The date and time of such payment and delivery are herein referred to as the closing date.

IV

The Company agrees that it will apply the net proceeds (exclusive of accrued interest) from the sale of the Debentures toward the redemption on or before September 1, 1939 of (a) \$57,427,000 principal amount of Shell Union Oil Corporation Fifteen-Year 3½% Debentures, due March 1, 1951, at 102½% of the principal amount thereof (\$58,862,675) and (b) \$25,000,000 principal amount of Shell Union Oil Corporation Fifteen Year 3½% Sinking Fund Debentures, due June 1, 1953, at 104% of the principal amount thereof (\$26,000,000). On the closing date, the Company, for the purposes of such redemption, will deposit in trust with the respective trustees or paying agents an amount in cash equivalent to the full redemption prices, including interest to the redemption dates, of said Fifteen-Year 3½% Debentures, and of said Fifteen Year 3½% Sinking Fund Debentures.

V

The several obligations of the Underwriters hereunder are subject to the following conditions:

(a) The Registration Statement shall have become effective not later than July 18, 1939, and no stop order suspending the effectiveness thereof shall have been issued on or prior to the closing date, and no proceedings for that purpose shall have been commenced or, to the Company's knowledge, be about to be commenced by the Securities and Exchange Commission on or prior to the closing date other than proceedings which may have been disposed of by that date in a manner satisfactory to you; and you shall have received, prior to payment by the Underwriters for the Debentures:

(i) a certificate, dated the closing date, signed by the President or a Vice-President of the Company, to the effect that no such stop order has been issued and that no proceedings for such purpose have been so taken or, to the Company's knowledge, are about to be commenced, other than proceedings which may have been disposed of in a manner satisfactory to you;

(ii) an opinion or opinions of Messrs. Davis Polk Wardwell Gardiner & Reed, counsel for the Underwriters, to the effect that (1) proper corporate proceedings have been taken so that the Trust Agreement is a valid and binding instrument in accordance with its terms, the Debentures have been validly authorized, and when duly executed by proper officers of the Company, duly authenticated by the Trustee, and delivered and paid for, will be validly issued and outstanding, and (2) the Registration Statement, the Prospectus and any supplements or amendments thereto, and the Newspaper Prospectus comply with the Securities Act of 1933, as amended, and the Rules and Regulations of the Securities and Exchange Commission thereunder;

(iii) an opinion or opinions, satisfactory to counsel for the Underwriters, of Messrs. Wickes, Neilson & Riddell, counsel for the Company, to the same effect as the opinion or opinions of Messrs. Davis Polk Wardwell Gardiner & Reed referred to in (ii) above, and further to the effect that (1) the Company has been duly incorporated and is on the closing date validly existing under the laws of the State of Delaware, and (2) neither the Company nor any subsidiary is a "public utility", a "gas utility", or a "holding company" within the meaning of the Public Utility Holding Company Act of 1935; and that the consent or order of no state commission or other governmental body is required for the valid creation or issuance of the Debentures or the valid execution and delivery of the Trust Agreement or that all such consents or orders required have been obtained;

(iv) a certificate, dated the closing date, signed by the President or a Vice-President of the Company, to the effect that there has been no material change in the condition of the Company, or of its subsidiaries, from the condition set forth in the Registration Statement and the Prospectus, other than changes arising from transactions in the ordinary course of business.

(b) The representations and warranties of the Company herein shall be true and correct and the Company shall not have failed on or prior to the closing date to have performed all agreements herein contained which should have been performed on its part at or prior to such date.

VI

In further consideration of the agreements of the Underwriters herein contained, the Company covenants as follows:

(a) As soon as the Company is advised thereof, to advise you, and confirm the advice in writing, (1) when the Registration Statement has become effective and (2) of the issuance by the Securities and Exchange Commission of any stop order suspending the effectiveness of the Registration Statement or of the initiation of any proceedings for that purpose.

(b) To deliver to each of the Underwriters without charge on or before the effective date of the Registration Statement, and from time to time thereafter during the period of one year from the first date of the public offering of the Debentures so many copies of the Prospectus (as supplemented or amended if the Company shall have made any supplements or amendments thereto) as you may reasonably request.

(c) To deliver to you without charge 175 copies of the Registration Statement (including financial statements and exhibits) and of any amendments thereto.

(d) Before filing any amendments to the Registration Statement after it has become effective or before making any amendments or supplements to the Prospectus, to furnish you with a copy of such proposed amendments or supplements.

(e) For a period of one year after the first date of the public offering of the Debentures, if any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, forthwith to prepare and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to whom Debentures may have been sold by you on behalf of the Underwriters and, upon request, to any other dealers making such request, either amendments to the Prospectus or supplemental information so that the statements in the Prospectus as so amended and supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading.

(f) To make generally available to the Company's security holders as soon as practicable an earning statement covering a period of twelve months beginning on the first day of the calendar month after the effective date of the Registration Statement, which earning statement shall satisfy the provisions of Section 11 (a) of the Securities Act of 1933, as amended.

(g) So long as any of the Debentures shall remain outstanding, to publish annually consolidated income statements, balance sheets and statements of summary of changes in surplus of the Company and its subsidiaries consolidated, all such statements to be audited by independent public accountants:

(h) To make application for the listing of the Debentures on the New York Stock Exchange and for their registration under the Securities Exchange Act of 1934.

(i) To endeavor to qualify the Debentures for offer and sale under the securities or Blue Sky laws of such States as you shall request in writing.

(j) To indemnify and hold harmless each of the Underwriters and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended, and each and all and any of them against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act of 1933, as amended, or at common law, and except as hereinafter provided, to reimburse each of the Underwriters and each such controlling person for any legal or other expenses incurred by it or them in connection with defending any actions, in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in the Prospectus (if used within one year after the first date of the public offering of the Debentures and as supplemented or amended if the Company shall furnish to the Underwriters any supplements or amendments thereto) or in the Newspaper Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any such untrue statement or omission or alleged untrue statement or omission, which was made in such Registration Statement, or Prospectus or Newspaper Prospectus in reliance upon information furnished in writing to the Company by any Underwriter expressly for use therein. Each Underwriter agrees that, promptly upon receipt of notice of the commencement of any action against such Underwriter or against any person so controlling such Underwriter in respect of which indemnity or reimbursement may be sought from the Company on account of its agreement contained in this paragraph, notice will be given to the Company in writing of the commencement thereof, but the omission so to notify the Company of any such action shall not release the Company from any liability which it may have to such Underwriter or to any such controlling person otherwise than on account of the indemnity agreement contained in this paragraph. In case any such action shall be brought against any Underwriter or against any such controlling person and notice shall be given to the Company of the commencement thereof, the Company shall be entitled to participate in, and, to the extent that it shall wish, including the selection of counsel, to direct, the defense thereof at its own expense. Any Underwriter or any such controlling person shall have the right to employ its or their own counsel although the Company has so selected counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless the employment of such counsel has been authorized by the Company in connection with defending such action.

Each Underwriter agrees to indemnify and hold harmless the Company against any and all losses, claims, damages or liabilities, joint or several, to which it may become subject under the Securities Act of 1933, as amended, or at common law, and to reimburse the Company for any legal or other expenses incurred by it in connection with defending any actions, in so far as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in the Prospectus (if used within one year after the first date of the public offering of the Debentures and as supplemented or amendment if the Company shall furnish to the Underwriters any supplements or amendments thereto) or in the Newspaper Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, which untrue statement or omission or alleged untrue statement or omission was made in such Registration Statement, or Prospectus or Newspaper Prospectus in reliance upon

information furnished in writing to the Company by such Underwriter expressly for use therein. The Company agrees promptly upon receipt of notice of the commencement of any action against the Company in respect of which indemnity or reimbursement may be sought from an Underwriter on account of its agreement contained in this paragraph, to notify such Underwriter in writing of the commencement thereof, but the omission of the Company so to notify such Underwriter of any such action shall not release such Underwriter from any liability which it may have to the Company otherwise than on account of the indemnity agreement contained in this paragraph. In case any such action shall be brought against the Company and the Company shall notify an Underwriter from whom indemnity or reimbursement may be sought on account of its agreement contained in this paragraph of the commencement thereof, such Underwriter shall be entitled to participate in and, to the extent that it shall wish, including the selection of counsel, to direct, the defense thereof at its own expense. The Company shall have the right to employ its own counsel although the Underwriter has so selected counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company unless the employment of such counsel has been authorized by the Underwriter in connection with defending such action.

The indemnity agreements contained in this Article VI (j) and the representations and warranties of the Company in this Agreement set forth shall remain operative and in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriter or controlling person or by or on behalf of the Company and (c) acceptance and payment hereunder for the Debentures.

VII

This agreement shall become effective when the Registration Statement becomes effective and until such time this Agreement may be terminated by the Company, by notifying you at your office, 2 Wall Street, New York, N. Y., or by such number of Underwriters who have in the aggregate agreed to purchase more than \$42,500,000 principal amount of the Debentures, by notifying the Company at its office, 50 West 50th Street, New York, N. Y. Any such notice may be in writing or by telegraph or by telephone and, if by telegraph or by telephone, shall be subsequently confirmed in writing.

If any of the Underwriters shall fail or refuse (whether for some reason sufficient to justify its cancellation or termination of its obligation to purchase hereunder or otherwise) to purchase the principal amount of the Debentures which it has hereunder agreed to purchase, the Company shall immediately notify the remaining Underwriters, at the respective addresses set forth in the Registration Statement, who may within twenty-four hours of receipt of such notice purchase or agree to purchase or procure some other responsible party or parties satisfactory to the Company to purchase or agree to purchase such Debentures on the terms herein set forth; and if the remaining Underwriters fail to purchase or agree to purchase or to procure a satisfactory party or satisfactory parties to purchase or agree to purchase such Debentures on such terms within twenty-four hours of the receipt of such notice, then the Company shall be entitled to an additional period of twenty-four hours within which to procure another party or parties to purchase or agree to purchase such Debentures on the terms herein set forth. In any such case either you or the Company shall have the right to postpone the closing date from the date determined as provided in Article III hereof, but in no event to a date later than August 1, 1939, in order that necessary changes and arrangements may be effected by you and by the Company. If the remaining Underwriters fail to purchase or agree to purchase or to procure a satisfactory party or parties to purchase or agree to purchase such Debentures, and if the Company also does not procure another party or parties to purchase or agree to purchase such Debentures, within the aforesaid periods, then this Agreement may be terminated, either by the Company or by Underwriters who have in the aggregate agreed to purchase more than 50% of the principal amount of the Debentures other than the Debentures which one or more Underwriters shall have failed or refused to purchase. In the event of any such termination the Company shall not be under any liability to any Underwriter, nor shall any Underwriter (other than an Underwriter who shall have failed or refused to purchase Debentures without some reason sufficient to justify its cancellation or termination of its obligation hereunder) be under liability to the Company.

If this Agreement shall be terminated by the Underwriters or any of them; because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason

the Company shall be unable to perform its obligations under this Agreement, or if the Company shall terminate this Agreement under the option contained in the first paragraph of this Article VII, the Company will reimburse the Underwriters or such underwriters as have so terminated this Agreement with respect to themselves, severally, for all of their out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by them.

VIII

The Agreement herein set forth has been and is made solely for the benefit of the Underwriters and the Company, their successors and assigns, and, to the extent expressed, for the benefit of persons controlling Underwriters and of dealers purchasing Debentures, their successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include any purchaser of the Debentures merely because of such purchase.

Please confirm that the foregoing correctly sets forth the agreement between us.

Very truly yours,

By , *President*
SHELL UNION OIL CORPORATION

Confirmed July 17, 1939.

MORGAN STANLEY & CO., INCORPORATED

By
Vice-President

Acting severally on behalf of itself and the several Underwriters named herein.

EXHIBIT 1

MORGAN STANLEY & CO. INCORPORATED

Two Wall Street, New York

4 \$5,000,000 SHELL UNION OIL CORPORATION FIFTEEN YEAR 2½% DEBENTURES

Date: July 1, 1939

Due July 1, 1954
NEW YORK, July 19, 1939.

DEAR SIRS: We and the other Underwriters named in the Offering Prospectus have severally agreed to purchase, subject to the terms and conditions of our Purchase Agreement, at 96¼% of the principal amount thereof, and accrued interest to the date of payment therefor, an aggregate of \$85,000,000 principal amount of Shell Union Oil Corporation (hereinafter called the Company) Fifteen Year 2½% Debentures (hereinafter called the Debentures), to be dated July 1, 1939, and to mature July 1, 1954, and more fully described in the enclosed copy of the Offering Prospectus.

A part of the \$85,000,000 principal amount of the Debentures is being offered for sale, when, as and if issued and accepted by the several Underwriters and subject to the approval of their counsel and to the other terms and conditions hereof, to dealers at 97¾% of the principal amount thereof—the public offering price—and accrued interest, less a concession of ½%, payable as hereinafter provided. No deduction from this concession will be made for expenses. Out of the above-stated concession of ½%, dealers may allow a concession not in excess of ¼% to brokers or dealers only, provided that such concession is not reallocated to a customer in any case.

We are advising you by telegram of the principal amount of Debentures reserved for purchase by you, subject to the terms and conditions hereof. Such Debentures will be reserved for purchase by you until 4 o'clock P. M. (standard time in your city), Wednesday, July 19, 1939. Please advise us at our office, 2 Wall Street, New York City, by the time specified, whether or not you agree to purchase, on the terms and conditions hereof, all or any part of such reserved Debentures. Applications for Debentures in excess of the amount so reserved and applications received after 4 o'clock P. M. (standard time in the applicant's city), Wednesday, July 19, 1939, will be received only subject to allotment by us in our uncontrolled discretion.

We have been advised by the Company that a Registration Statement in respect of these Debentures under the Securities Act of 1933, as amended, has become effective. Neither you nor any other person is authorized by the Company or by the Underwriters to give any information or make any representa-

tions, other than those contained in the Offering Prospectus, in connection with the issue and sale of the Debentures. No dealer is authorized to act as agent for the several Underwriters when offering the Debentures to the public or otherwise. The Company has agreed with the Underwriters that for a period of one year after the first date of the public offering of the Debentures, if any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, forthwith to prepare and furnish, at its own expense, to the Underwriters and to the dealers to whom Debentures may have been sold by us on behalf of the Underwriters and, upon request, to any other dealers making such request, either amendments to the Prospectus or supplemental information so that the statements in the Prospectus as so amended and supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading.

You may offer the Debentures Wednesday morning, July 19, 1939, subject to the foregoing and to the above referred to conditions of the Purchase Agreement of the Underwriters. No dealer shall enter, either directly or indirectly, into any agreement or arrangement with any purchaser of the Debentures whereby such dealer accepts Shell Union Oil Corporation Fifteen-Year $3\frac{1}{2}\%$ Debentures dated March 1, 1936 and due March 1, 1951 or Shell Union Oil Corporation Fifteen Year $3\frac{3}{8}\%$ Sinking Fund Debentures, due June 1, 1953, (both of which issues the Company intends to redeem on or before September 1, 1939) in payment of all or any part of the purchase price of the Debentures at any price in excess of $102\frac{1}{2}\%$ for the $3\frac{1}{2}\%$ Debentures or 104% for the $3\frac{3}{8}\%$ Debentures and accrued interest in either case to the redemption date.

Public advertisement of the Debentures will be made July 19, 1939. After that date, you may advertise on your own responsibility over your own name and at your own expense. Additional copies of the Offering Prospectus will be supplied in reasonable quantities upon request.

The Debentures purchased by the Underwriters which are not being offered to dealers in accordance with the terms of this Agreement are being offered for sale by certain of the Underwriters, all of whom have agreed with respect to the sale of Debentures to comply with the terms and conditions of this Agreement. All of such Underwriters have agreed that they will not sell or offer to sell or solicit offers to buy Debentures prior to the public offering.

Payment for Debentures purchased by you is to be made by certified check at the office of J. P. Morgan & Co., 23 Wall Street, New York City, at the public offering price, and accrued interest to the date of payment therefor, on July 24, 1939, or such later date as we may advise, in New York Clearing House funds to the order of Morgan Stanley & Co. Incorporated, against delivery of temporary Debentures. The concession to which you shall be entitled will be paid to you upon the termination of this Agreement. Notwithstanding the distribution of any such amount to you, you agree to pay your proportionate share of any claim, demand or liability asserted against you and the other dealers to whom Debentures are sold in accordance with the terms of this Agreement or any of them, or against us as Manager of the offering, based on the claim that such dealers constitute an association, unincorporated business or other separate entity.

In the event that prior to the termination of this Agreement (or prior to such earlier date as we may determine), we purchase for the account of any of the several Underwriters, in the open market or otherwise, at or below the public offering price, any Debentures delivered to you, we reserve the right to withhold the above mentioned concession on such Debentures.

This Agreement will terminate on September 23, 1959, unless sooner terminated by us.

As Manager of the offering, we shall have full authority to take such action as we may deem advisable in respect of all matters pertaining to the offering. As Manager, we shall be under no liability to you for or in respect of the validity of, or the form of, or the representations contained in, the Debentures or the Registration Statement or the Offering Prospectus or the Newspaper Prospectus or the Agreement with the Company for the purchase of the Debentures or other instruments executed by the Company or by others: or for the delivery of the Debentures or the performance by the Company or by others of any agreement on its or their part; or for the qualification of the Debentures for sale under the laws of any jurisdiction; or for any matter connected with this Agreement, except for lack of good faith and for obligations expressly assumed by us in this Agreement. This offer of Debentures to

dealers is made in each state only by such of the Underwriters as may lawfully sell the Debentures to dealers in such state.

Each of the Several Underwriters has authorized us for its account, during the term of agreements between us and the several Underwriters (which agreements will terminate thirty days after the termination of this Agreement, or on such earlier date as we may determine), (1) to buy and to sell Debentures, in addition to the Debentures sold to dealers pursuant to the terms of this Agreement, in the open market or otherwise, for either long or short account, on such terms and at such prices as we may deem desirable, and (2) in arranging for sales to dealers pursuant to the terms of this Agreement to over-allot, it being understood that such purchases and sales and over-allotments shall be made for the account of each of the several Underwriters as nearly as practicable in proportion to the respective principal amounts of Debentures which the Underwriters severally have agreed to purchase from the Company; provided, however, that at no time shall the net commitment of any Underwriter under such provisions of said agreements, for either long or short account, exceed 10% of the principal amount of Debentures which any such Underwriter has agreed to purchase from the Company.

Each of the several Underwriters reserves the right to make purchases and sales of the Debentures in the ordinary course of business, and not for the purpose of stabilizing the price of any security, for its own account, in the open market or otherwise, for either long or short account.

Please advise us whether or not you agree to purchase all or any part of the Debentures reserved for you, and if you so agree please confirm your purchase by signing, in the manner indicated on the reverse hereof, and returning to us the duplicate copy of this letter enclosed herewith.

Very truly yours,

MORGAN STANLEY & CO., INCORPORATED
By-----

MORGAN STANLEY & CO., INCORPORATED,
2 Wall Street, New York, N. Y.

DEAR SIR: We hereby confirm our purchase of \$----- principal amount of Shell Union Oil Corporation Fifteen Year 2½% Debentures, due July 1, 1954, reserved firm for us in accordance with all the terms and conditions stated in the foregoing letter and in your telegram setting forth the amount of Debentures reserved for purchase by us. We hereby acknowledge receipt of the Offering Prospectus dated July 19, 1939, relating to the above Debentures and we further state that in purchasing these Debentures, we have relied upon said Offering Prospectus and on no other statements whatsoever, written or oral.

By-----
-----Address

DATED, JULY --, 1939.

EXHIBIT No. 2016

[Excerpt from contract between Morgan Stanley & Co., Incorporated and Southern Bell Telephone and Telegraph Company]

\$22,250,000 SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY FORTY YEAR
3% DEBENTURES

Dated July 1, 1939

Due July 1, 1979

CONTRACT

Dated July 17, 1939.

* * * * *

III

If any Underwriter (except for breach of any condition set forth in Article VI hereof or for breach of any representation or warranty herein by the Company or for default by the Company in the performance of any of its obligations hereunder prior to the payment by the Underwriters for the Debentures) shall fail or refuse to purchase the principal amount of Debentures which it is required to purchase under this Agreement, the Company will immediately notify you and, in such case, you will, within three days of receipt of such notice, agree to purchase for your own account, or any parties who agree to purchase, such Debentures on the terms herein set forth. In any such case you will have the right to postpone the closing date from the date determined as provided in Article V, but in no event to a date later than August 8, 1939.

in order that necessary changes and arrangements may be effected by you by the Company.

* * * * *

EXHIBIT No. 2017

[Excerpt from underwriting agreement between Appalachian Electric Power Company and the Syndicate headed by Bonbright & Company, Incorporated]

APPALACHIAN ELECTRIC POWER COMPANY

\$57,000,000 First Mortgage Bonds 4% Series, due 1963

\$10,000,000 Sinking Fund Debentures 4½% Series, due 1948

Syndicate Managers: Bonbright & Company, Incorporated.

Underwriting Agreement dated January 28, 1938.

"Any Bonds or Debentures reserved for sale to Dealers or Underwriters pursuant to Article II hereof but not purchased by them, or so reserved and purchased but with respect to the payment for which default is made, and not purchased by you for the accounts of the several Underwriters pursuant to Par. VIII hereof, shall upon the termination of this agreement, and may in your discretion from time to time prior thereto, be delivered to the respective Underwriters, (a) in the case of Bonds as nearly as practicable in the ratio that the principal amount of Bonds of the respective Underwriters so reserved for offering bears to the total principal amount of Bonds of all Underwriters so reserved, against payment, etc., etc. * * * and (b) in the case of Debentures, as nearly as practicable in the same ratio that the principal amount of Debentures of the respective Underwriters so reserved for offering bears to the total principal amount of Debentures of all Underwriters so reserved, against payment, etc., etc."

EXHIBIT No. 2018

[Excerpt from underwriting agreement between Bethlehem Steel Corporation and the Syndicate headed by Kuhn, Loeb & Co.; Smith, Barney & Co.; Mellon Securities Corporation]

BETHLEHEM STEEL CORPORATION

\$25,000,000 Consolidated Mortgage Twenty Year Sinking Fund 3¼% Bonds, Series F, due 1959.

Syndicate Managers: Kuhn, Loeb & Co.; Smith, Barney & Co.; Mellon Securities Corporation.

Underwriters Agreement dated June 26, 1939.

ART. 7. "Any Bonds reserved for offering to the Selling Group, as aforesaid, but not sold, and any such Bonds so reserved but on the commitment for the purchase of which any member of the Selling Group has defaulted, shall, on or before the termination of this agreement among the several Underwriters, at your option, either (a) be sold by you, at not less than 99% of the principal amount thereof plus accrued interest, for the account of the Underwriter which owns such Bonds, or (b) *be delivered to each Underwriter as nearly as practicable in the proportion which the principal amount of Bonds purchased by such Underwriter and so reserved for sale to members of the Selling Group bears to the total principal amount of Bonds of all Underwriters so reserved, against payment to you for the respective accounts of the Underwriters which owns such Bonds of 97% of the principal amount thereof, plus accrued interest.*" [Italics supplied.]

EXHIBIT No. 2019

[Excerpt from underwriting agreement between Central Illinois Public Service Company and the Syndicate headed by Halsey, Stuart & Co., Inc.]

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

\$38,000,000 First Mortgage Bonds, Series A, 3¾%, due 1968.

Syndicate Manager: Halsey, Stuart & Co. Inc.

Underwriters Agreement dated December 5, 1938.

ART. 5. "In case any Bonds reserved for allotment to selected dealers * * * shall not be purchased and paid for by the selected dealer * * * each Under-

writer agrees (1) to accept delivery when tendered by you of (a) a principal amount of such bonds reserved for allotment to selected dealers as nearly as practicable in the proportion which the amount of Bonds reserved for allotment to selected dealers for the account of such Underwriter shall bear to the total amount of Bonds reserved for allotment to selected dealers, * * *

EXHIBIT No. 2020

[Excerpt from underwriting agreement between Central Maine Power Company and the Syndicate headed by Coffin & Burr, Incorporated]

CENTRAL MAINE POWER COMPANY

\$4,500,000 First and General Mortgage Bonds, Series J 3½% due 1968

Syndicate Managers: Coffin & Burr, Incorporated.

Underwriters Agreement dated February 17, 1939.

"If any of the Bonds reserved for allotment to the Selected Dealers or for sale to Institutions shall not be subscribed for, purchased and paid for by them, we reserve the right to require the Underwriters to take up such Bonds in the same proportions in which they were reserved from their respective accounts and you and we agree to pay for such Bonds at the contract price, plus accrued interest from December 1, 1938. The amount so paid shall be used by us to reimburse the Underwriters for the cost to them of any of their Bonds so reserved for which they have not theretofore been reimbursed."

EXHIBIT No. 2021

[Excerpt from underwriting agreement between Consolidated Gas Electric Light and Power Company of Baltimore and the Syndicate headed by White, Weld & Co.]

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

\$7,000,000 Series P, 3% First Refunding Mortgage Sinking Fund Bonds due 1969

Syndicate Managers: White, Weld & Co.

Underwriters Agreement dated June 5, 1939.

Art. S. "Each of the Underwriters agrees * * * (e) to take up and pay for, on your demand, at a price of 103% of the principal amount thereof and accrued interest, any of the Bonds which such Underwriter has agreed to purchase from the Company, reserved by you, as above provided for allotment and sale to Selected Dealers, and not purchased and paid for by the Selected Dealers. Such Bonds are to be taken up by each of the Underwriters, however, as nearly as practicable, in the same proportion as its Bonds so reserved respectively bore to the aggregate so reserved;"

EXHIBIT No. 2022

[Excerpt from underwriting agreement between Dallas Power & Light Company and the Syndicate headed by Lee Higginson Corporation]

DALLAS POWER & LIGHT COMPANY

\$16,000,000 First Mortgage Bonds, 3½% Series due 1967

Syndicate Managers: Lee Higginson Corporation.

Underwriters Agreement dated February 6, 1937.

Art. 5. "Each of the Underwriters shall be severally liable for Bonds reserved for allotment to the selected dealers but not subscribed for or purchased and paid for by the selected dealers, in the proportion which the amount of Bonds so reserved for allotment to selected dealers for the account of each of the Underwriters, shall bear to the total amount of Bonds so reserved for allotment."

EXHIBIT No. 2023

[Excerpt from underwriting agreement between Firestone Tire & Rubber Company and the Syndicate headed by Brown, Harriman & Co., Incorporated; (Harriman, Ripley & Co., Incorporated) Otis & Co. (Incorporated)]

FIRESTONE TIRE & RUBBER COMPANY

\$50,000,000 Ten-Year 3½% Debentures, due 1948

Syndicate Managers: Brown, Harriman & Co., Incorporated; (Harriman, Ripley & Co., Incorporated) Otis & Co. (Incorporated).

Underwriters Agreement dated October 24, 1938.

Art. II. "Any Debentures reserved for sale to dealers and institutions, as aforesaid, but not purchased and paid for by them, may in your discretion, be delivered to the Underwriters, except Brown Harriman & Co., Limited, *in the ratio that the principal amount of Debentures of the respective Underwriters so reserved bears to the total principal amount of such Debentures of all Underwriters so reserved*, or may be taken over for the account of the several Underwriters, except Brown Harriman & Co., Limited, as provided in Article VIII hereof." [Italics supplied.]

EXHIBIT No. 2024

[Excerpt from underwriting agreement between Gattineau Power Company and the Syndicate headed by The First Boston Corporation]

GATINEAU POWER COMPANY

\$52,500,000 First Mortgage Bonds, 3¾% Series A due 1969.

Syndicate Managers: The First Boston Corporation.

Underwriters Agreement dated April 21, 1939.

"In the event that any of the Series A Bonds reserved for offering to the selected dealers, or to institutional purchasers, as above provided, shall not be purchased and paid for by the selected dealers or institutional purchasers, as the case may be, the Representative reserves the right either to deliver such Series A Bonds in whole or in part to the respective Underwriters as nearly as practicable in the ratio that the principal amount of Series A Bonds of the respective Underwriters so reserved for offering to the selected dealers or to institutional purchasers, as the case may be, bears to the total principal amount of such Series A Bonds of all Underwriters so reserved for sale or to sell such Series A Bonds in whole or in part for their respective accounts in the same ratio."

EXHIBIT No. 2025

[Excerpt from underwriting agreement between Indianapolis Power & Light Company and the Syndicate headed by Lehman Brothers]

INDIANAPOLIS POWER & LIGHT COMPANY

\$32,000,000 First Mortgage Bonds, 3¾% Series due 1968 and \$5,500,000 Serial Notes

Syndicate Manager: Lehman Brothers.

Underwriting Agreement signed August 3, 1938.

PAR. 3. "All sales of Bonds to retail purchasers and all sales of Notes to retail purchasers or other dealers shall be made for the accounts of the respective Underwriters, as nearly as practicable, proportionately to the respective principal amounts of Bonds and of Notes which they have respectively agreed to purchase from the Company. All sales of Bonds reserved for offering to the Selected Dealers shall be made for the accounts of the respective Underwriters for whom the same have been so reserved, as nearly as practicable, proportionately to the amount of Bonds so reserved for the account of each such Underwriter. Bonds and Notes of any Underwriter so offered or reserved, which remain unsold, or if sold are not paid for, at any time prior to the settlement of accounts hereunder, may in our discretion, or shall upon the request of such Underwriter, be delivered to such Underwriter, but such Bonds and Notes shall remain

subject to disposition by us, in our discretion, until the settlement of accounts hereunder."

EXHIBIT No. 2026

[Excerpt from underwriting agreement between Michigan Consolidated Gas Company and the Syndicate headed by Dillon, Read & Co.; Mellon Securities Corporation]

MICHIGAN CONSOLIDATED GAS COMPANY

\$34,000,000 First Mortgage Bonds 4% Series due 1963

Syndicate Managers: Dillon, Read & Co.; Mellon Securities Corporation.

Underwriting Agreement dated October 4, 1938.

"Article 4. * * * In case the members of the Selling Group shall not take up and pay for the entire portion of the issue of Bonds with respect to which the Selling Group is proposed to be formed, the Bonds not so taken up and paid for by members of the Selling Group shall be divided among the Bond Underwriters at or prior to the termination of this agreement, each Bond Underwriter receiving Bonds in the proportion which the amount of Bonds purchased by it from the Company (after deducting the amount of Bonds retained by him as aforesaid) shall bear to the total amount of the issue of Bonds (after deducting the total amount of Bonds so retained by all Bond Underwriters).

EXHIBIT No. 2027

[Excerpt from underwriting agreement between Montana-Dakota Utilities Co. and the Syndicate headed by Blyth & Co., Inc., and Merrill Lynch & Co., Inc.]

MONTANA-DAKOTA UTILITIES Co.

\$9,000,000 First Mortgage Sinking Fund Bonds, 4½% Series, due 1954

Syndicate Managers: Blyth & Co., Inc. and Merrill Lynch & Co., Inc.

Underwriting Agreement dated May 20, 1939.

PAR. 2. "Each Underwriter agrees to reserve such part or all of the Bonds which such Underwriter has agreed to purchase from the Company, as you, as representatives of the several Underwriters, shall, in your discretion, determine for sale to certain dealers whom you may select * * * *If all of the Bonds so reserved are not sold to Selected Dealers, the amounts of Bonds of the respective Underwriters sold to Selected Dealers shall be as nearly as practicable proportionate to the amounts of Bonds of the respective Underwriters so reserved.*" [Italics supplied.]

EXHIBIT No. 2028

[Excerpt from underwriting agreement between National Distillers Products Corporation and the Syndicate headed by Glore, Forgan & Co.; Harriman Ripley & Co., Inc.]

NATIONAL DISTILLERS PRODUCTS CORPORATION

\$22,500,000 Ten-Year Convertible 3½% Debentures, due March 1, 1949

Syndicate Managers: Glore, Forgan & Co.; Harriman Ripley & Co., Inc.
Underwriters Agreement dated March 17, 1939.

5. "Each of the several Underwriters authorizes us, for its account, to reserve for offering, and to sell and deliver any or all of the Debentures which such Underwriter has agreed to purchase from the Company (a) to institutions selected by us, and (b) to dealers selected by us and among whom we may include any of the Underwriters and any Sub-underwriter. Sales to institutions shall be made at the public offering price plus accrued interest. Sales to such dealers, who are hereinafter referred to as the "selected dealers," shall be made only in accordance with the terms and conditions of selling agreements (hereinafter referred to as the "selling agreements") with such dealers in the form attached hereto as Annex B, with such modifications therein as we may consider necessary or advisable and which in our judgment are not material modifications. On or before the public offering date we will advise each Underwriter of the principal amount of Debentures to be purchased by such Underwriter from the Company which we have not reserved for sale as aforesaid. Any Debentures reserved for sale to dealers or for sale

to institutions, as aforesaid, but not purchased and paid for by them may in each case in our discretion be delivered to the several Underwriters in the proportions that the respective principal amounts of Debentures of the several Underwriters so reserved for such purpose bear to the total principal amount of Debentures so reserved for such purpose or may be taken over for the account of the several Underwriters as provided in Paragraph 9 hereof. Each of the several Underwriters authorizes us on its behalf and as its representative to take all such action as we may deem advisable in respect of all matters pertaining to the offering to institutions, to dealers and to the public of the Debentures."

EXHIBIT No. 2029

[Excerpt from underwriting agreement between National Steel Corporation and the Syndicate headed by Kuhn, Loeb & Co. and Harriman Ripley & Co., Incorporated]

NATIONAL STEEL CORPORATION \$50,000,000

First (Collateral) Mortgage Bonds 3% Series, due April 1, 1965

Syndicate Managers: Kuhn, Loeb & Co. and Harriman Ripley & Co., Incorporated.

Underwriting Agreement dated April 24, 1939.

ART. 7 (a). "Any Bonds reserved for offering to institutions or to the Selling Group, as aforesaid, but not sold and any such Bonds so reserved but on the commitment for the purchase of which any institution or member of the Selling Group has defaulted, shall, on or before the termination of this agreement among the several Bond Underwriters, at your option, either (a) be sold by you, at not less than 99% plus accrued interest, for the account of the respective Bond Underwriters which own such Bonds, or (b) *be delivered to the respective Bond Underwriters as nearly as practicable in the ratio that the principal of Bonds purchased by each Bond Underwriter and so reserved for sale to institutions and members of the Selling Group bears to the total principal amount of Bonds of all Bond Underwriters so reserved*, against payment to you for the respective accounts of the Bond Underwriters which own such Bonds of 97% plus accrued interest." [Italics supplied.]

EXHIBIT No. 2030

[Excerpt from underwriting agreement between New York State Electric & Gas Corporation and the Syndicate headed by The First Boston Corporation; Glone, Forgan & Co.]

NEW YORK STATE ELECTRIC & GAS CORPORATION

\$12,000,000 First Mortgage Bonds, 3¾% Series due 1964

Syndicate Managers: The First Boston Corporation; Glone, Forgan & Co. Underwriters Agreement dated June 19, 1939.

"In the event that any of the Bonds reserved for offering to the Bond Dealers or institutions, as above provided, shall not be purchased and paid for by such dealers or institutions, the Representatives reserve the right either to deliver such Bonds in whole or in part to the respective Underwriters of the Bonds as nearly as practicable in the ratio that the principal amount of Bonds to be purchased by each of the several Underwriters so reserved for offering to the Bond Dealers or to institutions, as the case may be, bears to the total principal amount of Bonds to be purchased by all Underwriters, so reserved for each such offering, or to sell such Bonds in whole or in part for their respective accounts in the same ratio."

EXHIBIT No. 2031

[Excerpt from underwriting agreement between North Shore Gas Company and North Shore Coke & Chemical Company and the Syndicate headed by A. G. Becker & Co.]

NORTH SHORE GAS COMPANY AND NORTH SHORE COKE & CHEMICAL COMPANY

\$5,100,000 Joint First Mortgage 4% Bonds Series A, due January 1, 1942

Syndicate Manager: A. G. Becker & Co. Underwriters Agreement dated

4. "In the event that any of the Bonds reserved for allotment to Dealers as above provided shall not be subscribed for or shall not be paid for by such

Dealers, then the respective Underwriters shall take up such Bonds in the ratio that the principal amount of bonds of the respective Underwriters so reserved for allotment bears to the total principal amount of such Bonds of all of the Underwriters so reserved, and the respective Underwriters agree to pay the Agent for such Bonds at a price of 100% of the principal amount thereof and accrued interest. The amount so paid shall be used by the Agent to reimburse the several Underwriters for cost to them of any of their Bonds so reserved for allotment for which they have not theretofore been reimbursed, as provided in paragraph 10 hereof."

EXHIBIT No. 2032

[Excerpt from underwriting agreement between Pennsylvania Power & Light Company and the Syndicate headed by Smith, Barney & Co.; The First Boston Corporation; Bonbright & Company, Incorporated; Dillon, Read & Co.]

PENNSYLVANIA POWER & LIGHT COMPANY

\$95,000,000 First Mortgage Bonds, 3½% Series Due 1969; \$28,500,000 4½% Debentures due 1974

Syndicate Managers: Smith, Barney & Co.; The First Boston Corporation; Bonbright & Company, Incorporated; Dillon, Read & Co.

Underwriting Agreement dated August 7, 1939.

ART. 2 (3rd par.) "We authorize you, with respect to the Bonds which we agree to purchase from the Company, to reserve for sale and to sell on our behalf any and all such Bonds to dealers selected by you, in such amounts as you shall in your discretion determine * * *. Any Bonds reserved for sale to the aforesaid dealers but not purchased by them and any bonds so reserved and purchased but with respect to the purchase of which default is made, shall, on or before the termination of this Agreement, at your option, either (a) be sold by you, at not less than 104¾% plus accrued interest for the account of the respective Underwriters which own such Bonds or (b) *be delivered to the respective Underwriters, as nearly as practicable in the ratio that the principal amount of bonds purchased by each underwriter from the Company and so reserved for sale to dealers bears to the total principal amount of Bonds of all Underwriters so reserved*, against payment to you for the respective accounts of the Underwriters which own such Bonds of 104¾% plus accrued interest." [Italics supplied.]

EXHIBIT No. 2033

[Excerpt from underwriting agreement between Public Service Company of Colorado and the Syndicate headed by Halsey, Stuart & Co., Inc.]

PUBLIC SERVICE COMPANY OF COLORADO

\$40,000,000 First Mortgage Bonds, 3½% Series due 1964

Syndicate Manager: Halsey, Stuart & Co., Inc.

Underwriters Agreement dated November 25, 1939.

ART. 5. "In case any Bonds * * * reserved for allotment to selected dealers * * * shall not be purchased and paid for by the selected dealer, * * * each Underwriter agrees (1) to accept delivery when tendered by you of (a) a principal amount of such Bonds reserved for allotment to selected dealers for the Bonds as nearly as practicable in the proportion which the amount of Bonds reserved for allotment to such selected dealers for the account of such Underwriter shall bear to the total amount of Bonds, reserved for allotment to such selected dealers, * * *"

EXHIBIT No. 2034

[Excerpt from underwriting agreement between Rochester Gas and Electric Corporation and the Syndicate headed by The First Boston Corporation and Smith, Barney & Co.]

ROCHESTER GAS AND ELECTRIC CORPORATION

\$8,323,000 General Mortgage $3\frac{1}{4}\%$ Bonds Due 1963 Series J.

Syndicate Managers: The First Boston Corporation; Smith, Barney & Co.

Underwriters Agreement dated June 19, 1939.

"In the event that any of the Bonds reserved for offering to the selected dealers, or to institutional purchasers, as above provided, shall not be purchased and paid for by the selected dealers or institutional purchasers, as the case may be, the Representatives reserve the right either to deliver such Bonds in whole or in part to the respective Underwriters as nearly as practicable in the ratio that the principal amount of Bonds of the respective Underwriters so reserved for offering to the selected dealers or to institutional purchasers bears to the total principal amount of such Bonds of all Underwriters so reserved for each particular purpose or to sell such Bonds in whole or in part for their respective accounts in the same ratio."

EXHIBIT No. 2035

[Excerpt from underwriting agreement between Shell Union Oil Corporation and the Syndicate headed by Dillon, Read & Co. and Hayden, Stone & Co.]

SHELL UNION OIL CORPORATION

\$60,000,000 15 Year $3\frac{1}{2}\%$ Debentures, Due March 1, 1951

Syndicate Managers: Dillon, Read & Co. and Hayden, Stone & Co.

Underwriting Agreement dated March 7, 1936.

"ARTICLE 4. * * * In case the members of the Selling Group shall not take up and pay for the entire portion of the issue of Debentures with respect to which the Selling Group is proposed to be formed, each of the Underwriters shall be severally liable for Debentures not so taken up and paid for by Selling Group members, in the proportion which the amount of Debentures purchased by such Underwriter from the Company (after deducting the amount of Debentures retained by him as aforesaid) shall bear to the total amount of the issue of Debentures (after deducting the total amount of Debentures so retained by all Underwriters)."

EXHIBIT No. 2036

[Excerpt from underwriting agreement between Southern Indiana Gas and Electric Company and the Syndicate headed by Bonbright & Company, Incorporated.]

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

85,895 shares 4.8% Preferred Stock

Syndicate Managers: Bonbright & Company, Incorporated.

Underwriting Agreement dated October 23, 1936.

ART. 10. "Upon the termination of the agreement expressed in Exhibit B you will notify each of the undersigned of any stock purchased by such undersigned and allotted as dealer shares but not sold to dealers, and of any dealer shares so allotted and sold but with respect to the payment for which default has been made. Any stock not so sold or not so paid for *shall be delivered to the parties hereto, pro rata, as nearly as practicable in the proportion which the number of shares of stock which each party has agreed to purchase from the Company bears to the entire number of shares to be purchased under said contract*, against payment to you for the account of the party owning such stock at \$101.25 per share, plus an amount equivalent to dividend from November 1, 1936 at 4.8% per annum to the date of such payment, for all stock so delivered to any party and not therefore owned and paid for by such party; and all the parties hereto agree to take up and pay for such stock upon such tender." [Italics supplied.]

EXHIBIT No. 2037

[Except from underwriting agreement between Texas Corporation and the Syndicate headed by Dillon, Read & Co.]

TEXAS CORPORATION

\$40,000,000 3% Debentures due 1959

Syndicate Managers: Dillon, Read & Co.

Underwriting Agreement dated April 10, 1939.

"ARTICLE 5. * * * In case the members of the Selling Group shall not take up and pay for the entire amount of Debentures with respect to which the Selling Group is proposed to be formed, the Debentures not so taken up and paid for by members of the Selling Group are to be divided among the Underwriters at or prior to the termination of this agreement, each Underwriter receiving Debentures in the proportion which the amount of Debentures purchased by it from the Corporation (after deducting the amount of Debentures retained by it as aforesaid) shall bear to \$40,000,000 principal amount of Debentures (after deducting the total amount of Debentures so retained by all Underwriters).

EXHIBIT No. 2038

[Excerpt from underwriting agreement between Union Oil Company of California and the Syndicate headed by Dillon, Read & Co.]

UNION OIL COMPANY OF CALIFORNIA

\$30,000,000 3% Debentures, due 1959

Syndicate Managers: Dillon, Read & Co.

Underwriting Agreement dated August 14, 1939.

"ARTICLE 5. * * * In case the members of the Selling Group shall not take up and pay for the entire amount of Debentures with respect to which the Selling Group is proposed to be formed, the Debentures not so taken up and paid for by members of the Selling Group are to be divided among the Underwriters at or prior to the termination of this agreement, each Underwriter receiving Debentures in so far as practicable in the proportion which the amount of Debentures purchased by it from the Company (after deducting the amount of Debentures retained by it as aforesaid) shall bear to \$30,000,000 principal amount of Debentures (after deducting the total amount of Debentures so retained by all Underwriters).

EXHIBIT No. 2039

[Excerpt from underwriting agreement between West Texas Utilities Company and the Syndicate headed by Harris, Hall & Company (Inc.)]

WEST TEXAS UTILITIES COMPANY

\$18,000,000 First Mortgage Bonds, Series A, 3¾%, due 1969

Syndicate Manager: Harris, Hall & Company (Inc.)

Und. writers Agreement dated June 2, 1939.

ART. 5. "In case any Bonds reserved for allotment to selected dealers shall not be purchased and paid for by the selected dealer, each Underwriter agrees (1) to accept delivery when tendered by you of a principal amount of such Bonds reserved for allotment to selected dealers as nearly as practicable in the proportion which the amount of Bonds reserved for allotment to selected dealers for the account of such Underwriter shall bear to the total amount of Bonds reserved for allotment to selected dealers, * * *

EXHIBIT No. 2040

[Excerpt from underwriting agreement between Wisconsin Electric Power Company and the Syndicate headed by Dillon, Read & Co.]

WISCONSIN ELECTRIC POWER COMPANY

\$54,500,000 First Mortgage Bonds 3½% Series, due 1968

Syndicate Managers: Dillon, Read & Co.

Underwriting Agreement dated October 21, 1938.

"ARTICLE 4. * * * In case the members of the Selling Group shall not take up and pay for the entire amount of Bonds with respect to which the Selling Group is proposed to be formed, the Bonds not so taken up and paid for by members of the Selling Group are to be divided among the Underwriters at or prior to the termination of this agreement, each Underwriter receiving Bonds in the proportion which the amount of Bonds purchased by it from the Company (after deducting the amount of Bonds retained by him as aforesaid) shall bear to the \$54,500,000 principal amount of Bonds (after deducting the total amount of Bonds so retained by all Underwriters)."

EXHIBIT No. 2041

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Shell Union Oil Corporation Debentures Purchased by Underwriters From Company and Reserved to Underwriters for Retail Distribution by Morgan Stanley & Co., Incorporated

Names of Underwriters	Amount	Reserved
Morgan Stanley & Co. Incorporated.....	\$10,000,000	
Kuhn, Loeb & Co.....	5,000,000	\$1,750,000
Smith, Barney & Co.....	4,000,000	3,250,000
Harriman Ripley & Co., Incorporated.....	4,000,000	3,250,000
The First Boston Corporation.....	4,000,000	2,750,000
Blyth & Co., Inc.....	3,500,000	2,800,000
Lehman Brothers.....	3,500,000	2,000,000
Lee Higginson Corporation.....	3,000,000	2,000,000
Hayden, Stone & Co.....	3,000,000	1,250,000
Lazard Freres & Co.....	3,000,000	1,500,000
Dominick & Dominick.....	2,000,000	1,250,000
A. C. Allyn and Company, Incorporated.....	300,000	300,000
Bacon, Whipple & Co.....	250,000	200,000
Baker, Watts & Company.....	250,000	225,000
A. G. Becker & Co., Incorporated.....	500,000	500,000
Biddle, Whelen & Co.....	300,000	225,000
Blair & Co., Inc.....	600,000	600,000
Blair, Bonner & Company.....	400,000	400,000
Bonbright & Company, Incorporated.....	1,500,000	700,000
Alex. Brown & Sons.....	400,000	400,000
Central Republic Company.....	500,000	500,000
E. W. Clark & Co.....	400,000	400,000
Clark, Dodge & Co.....	1,000,000	750,000
Coffin & Burr, Incorporated.....	500,000	400,000
R. L. Day & Co.....	400,000	400,000
Dick & Merle-Smith.....	400,000	400,000
Eastman, Dillon & Co.....	400,000	400,000
Equitable Securities Corporation.....	300,000	250,000
Estabrook & Co.....	1,000,000	800,000
Ferris & Hardgrove.....	250,000	125,000
First of Michigan Corporation.....	250,000	250,000
Francis, Bro. & Co.....	250,000	225,000
Glore, Forgan & Co.....	900,000	600,000
Goldman, Sachs & Co.....	1,500,000	1,000,000
Graham, Parsons & Co.....	350,000	350,000
Hallgarten & Co.....	350,000	350,000
Harris, Hall & Company (Incorporated).....	600,000	600,000
Hayden, Miller and Company.....	400,000	400,000
Hemphill, Noyes & Co.....	750,000	750,000
J. J. B. Hilliard & Son.....	250,000	175,000
Hornblower & Weeks.....	750,000	650,000
W. E. Hutton & Co.....	1,250,000	1,000,000
The Illinois Company of Chicago.....	250,000	250,000
Jackson & Curtis.....	500,000	450,000
Kalman & Company.....	250,000	200,000
Kean, Taylor & Co.....	400,000	400,000
Kidder, Peabody & Co.....	2,500,000	2,250,000

EXHIBIT No. 2041—Continued

Names of Underwriters	Amount	Reserved
Ladenburg, Thalmann & Co.	\$750,000	\$400,000
Laird, Bissell & Meeds	250,000	200,000
Mackubin, Legg & Company	250,000	250,000
Laurence M. Marks & Co.	500,000	500,000
Merrill Lynch & Co. Inc.	350,000	350,000
Merrill, Turben & Co.	250,000	250,000
Mitchum, Tully & Co.	300,000	200,000
F. S. Moseley & Co.	1,250,000	1,000,000
G. M. P. Murphy & Co.	300,000	300,000
W. H. Newbold's Son & Co.	300,000	300,000
Palne, Webber & Co.	500,000	500,000
Arthur Perry & Co. Incorporated.	300,000	300,000
R. W. Pressprich & Co.	500,000	500,000
Reinholdt & Gardner	250,000	250,000
Riter & Co.	400,000	400,000
E. H. Rollins & Sons Incorporated.	750,000	650,000
L. F. Rothschild & Co.	600,000	550,000
Salomon Bros. & Hutzler	750,000	700,000
Schoellkopf, Hutton & Pomeroy, Inc.	500,000	500,000
Schwabacher & Co.	300,000	250,000
Scott & Stringfellow	250,000	150,000
Shields & Company	750,000	750,000
Smith, Moore & Co.	250,000	200,000
William R. Staats Co.	300,000	200,000
Starkweather & Co.	250,000	250,000
Stern Brothers & Co.	250,000	250,000
Stern, Wampler & Co. Inc.	300,000	250,000
Stone & Webster and Blodget, Incorporated	750,000	700,000
Spencer Trask & Co.	500,000	400,000
Tucker, Anthony & Co.	600,000	500,000
Union Securities Corporation	1,000,000	1,000,000
G. H. Walker & Co.	400,000	300,000
Weeden & Co.	250,000	175,000
Wells-Dickey Company	300,000	300,000
White, Weld & Co.	1,500,000	1,000,000
Whiting, Weeks & Stubbs Incorporated	350,000	350,000
The Wisconsin Company	750,000	750,000
Dean Witter & Co.	750,000	500,000
Total	85,000,000	56,050,000

Source: Information supplied to Securities & Exchange Commission by Morgan Stanley & Co., Incorporated in connection with Shell Union Oil Corporation offering of \$85,000,000 fifteen year 2½% Debentures, due 1954.

"EXHIBIT No. 2042-1" appears in full in the text, p. 12670.

"EXHIBIT No. 2042-2" appears in full in the text, p. 12670.

"EXHIBIT No. 2042-3" appears in full in the text, p. 12671.

"EXHIBIT No. 2042-4" appears in full in the text, p. 12671.

"EXHIBIT No. 2042-5"

[From the files of Halsey, Stuart & Co., Inc.]

(Stamped:) Wire Div., 1938 Aug 30 PM 2:56

122 HUGH:

On Northern States special sales 10% dealers 45% on Union Elec. No special sales which is Dillons usual policy. Waiting their reply amt for dealers.

CARLSON.

EXHIBIT No. 2043

[Samples of dealer performance record cards used by Morgan Stanley & Co. Incorporated]

Issue	Part. or offer.	Subs.	Allot.	Repur.
1. \$19,172,000 Consumers Power Company First Lien and Unifying Mortgage Bonds 3½% Series of 1935, dated Oct. 1, 1935, due May 1, 1965.	15		15	
2. \$20,000,000 The Dayton Power and Light Company First and Refunding Mortgage Bonds, 3½% Series Due 1960, Dated October 1, 1935, Due October 1, 1960.	15		15	
3. \$43,700,000 Illinois Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B Dated October 1, 1935, Due October 1, 1970.	25		25	
4. \$43,963,500 Ohio Edison Company First and Consolidated Mortgage Bonds 4% Series of 1935 due 1965, dated November 1, 1935 due November 1, 1965.	25		25	
5. \$25,000,000 New York and Queens Electric Light and Power Company First and Consolidating Mortgage Bonds 3½% Series of 1935, Dated November 1, 1935 due November 1, 1965.	15		15	
6. \$44,000,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B, dated December 1, 1935 due December 1, 1964.	30		30	
7. \$55,000,000 The New York Edison Company, Inc. First Lien and Refunding Mortgage 3½% Bonds, Series D, Dated October 1, 1935 Due October 1, 1965.	50		50	
8. \$7,178,500 Central Illinois Light Company First and Consolidated Mortgage Bonds 3½% Series Due 1966, Dated April 1, 1936 Due April 1, 1966.				
9. \$55,830,000 Consumers Power Company First Mortgage Bonds 3½% Series of 1936 Due 1970. Dated March 1, 1936, Due November 1, 1970.	50		50	
10. \$9,292,000 Louisville and Nashville Railroad Company First and Refunding Mortgage 4% Bonds, Series D. Dated August 1, 1931 Due April 1, 2003. Bearing Interest from April 1, 1936.				
11. \$40,000,000 The New York Central Railroad Company Ten Year 3½% Secured Sinking Fund Bonds Dated April 1, 1936 Due April 1, 1940.	35		35	
12. \$15,000,000 The New York Central Railroad Company Serial Secured Notes Issue of 1936. Due April 1, 1937 to 1941 inclusive.				
13. \$70,000,000 Consolidated Edison Company of New York, Inc. Debentures, \$35,000,000 Ten-Year 3½% Series Due 1946, Dated April 1, 1936, Due April 1, 1946, \$35,000,000 Twenty-Year 3½% Series Due 1956, Dated April 1, 1936, Due April 1, 1956.	50		50	
14. \$30,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3¾% Bonds, Series B, Dated April 1, 1936, Due April 1, 1966.				
15. \$40,362,000 The Chesapeake and Ohio Railway Company, Refunding and Improvement Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1966.	35		35	
16. \$24,000,000 The Cincinnati Union Terminal Company First Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1971.				
17. \$22,727,000 Chicago and Western Indiana Railroad Company, First and Refunding Mortgage 4½% Series D, Sinking Fund Bonds, Dated March 1, 1936, Due September 1, 1962.	25		25	
18. \$55,000,000 Brooklyn Edison Company, Inc. Consolidating Mortgage Bonds. 3½% Series of 1936, Dated May 15, 1936, Due May 15, 1966.	50		50	
19. Standard Oil Company (Incorporated in New Jersey) Twenty-Five Year 3% Debentures, Dated June 1, 1936, due June 1, 1961.	30		30	
20. \$12,000,000 Crane Co., Fifteen-Year 3½% Sinking Fund Debentures, Dated June 1, 1936, Due June 1, 1951.				
21. \$32,493,000 The Niagara Falls Power Company First and Refunding Mortgage Bonds, 3½% Series of 1966, Dated March 1, 1936 Due March 1, 1966.	30		30	
22. \$26,000,000 Louisville and Nashville Railroad Company, First and Refunding Mortgage 3¾% Bonds, Series E, Dated August 1, 1921, due April 1, 2003, Bearing Interest from April 1, 1936.	25		25	
23. \$15,300,000 The Chesapeake and Ohio Railway Company, Serial Notes, Issue of 1936, Dated July 15, 1936, Due \$1,530,000 Annually on July 15, from 1937 to 1946, both inclusive.				
24. \$13,827,000 Indianapolis Water Company, First Mortgage Bonds, 3½% Series Due 1966, Dated July 1, 1936, Due July 1, 1966.	400		400	
25. \$30,000,000 The New York Edison Company, Inc., First Lien and Refunding Mortgage 3½% Bonds, Series E, Dated April 1, 1936, Due April 1, 1966.	30		30	
26. \$29,500,000 The Chesapeake and Ohio Railway Company Refunding and Improvement Mortgage 3½% Bonds, Series E, Dated August 1, 1936, Due August 1, 1966.	25		25	
27. \$100,000,000 General Motors Acceptance Corporation Debentures, \$50,000,000 Ten-Year 3% Series Due 1946, Dated August 1, 1936, Due August 1, 1946, \$50,000,000 Fifteen-Year 3½% Series Due 1951, Dated August 1, 1936, Due August 1, 1951.	70		70	
28. \$35,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 3½% Series Due 1966, Dated August 1, 1936 Due August 1, 1966.	35		35	

EXHIBIT No. 2043—Continued

Issue	Part. or offer.	Subs.	Allot.	Repur.
29. \$150,000,000 American Telephone and Telegraph Company, Twenty-five Year 3¼% Debentures, Dated October 1, 1936, Due October 1, 1961	150		150	
30. \$23,500,000 Argentine Republic, Sinking Fund External Conversion Loan 4½% Bonds, Dated November 15, 1936, Due November 15, 1971	20		20	
31. \$140,000,000 American Telephone and Telegraph Company, Thirty Year 3¼% Debentures, Dated December 1, 1936, Due December 1, 1966	125		125	
32. \$12,000,000 Consumers Power Company, First Mortgage Bonds, 3¼% Series of 1936 Due 1966, Dated November 1, 1936, Due November 1, 1966				
33. \$25,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3¼% Bonds Series C, Dated December 1, 1936, Due December 1, 1966	35		35	1
34. \$26,834,000 Ohio Edison Company First Mortgage Bonds 3¼% Series of 1937 Due 1972, Dated January 1, 1937, Due January 1, 1972	35		35	
35. \$50,000,000 Great Northern Railway Company General Mortgage 3¼% Bonds, Series I, Dated January 1, 1937, Due January 1, 1967	50		50	
36. \$30,000,000 Government of the Dominion of Canada Seven Year 2¼% Bonds, Dated January 15, 1937, Due January 15, 1944	25		25	
37. \$55,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds, Dated January 15, 1937, Due January 15, 1967	50		50	
38. \$70,000,000 Argentine Republic Sinking Fund External Conversion Loan 4% Bonds, Dated February 15, 1937, Due February 15, 1972	50		50	
39. \$130,000,000 Philadelphia Electric Company First and Refunding Mortgage Bonds, 3½% Series Due 1967, Dated March 1, 1937, Due March 1, 1967	125		75	
40. \$35,000,000 Argentine Republic Sinking Fund External Conversion Loan 4% Bonds Dated April 15, 1937, Due April 15, 1972	25			
41. \$42,500,000 Southern Bell Telephone and Telegraph Company Twenty-five Year 3¼% Debentures, Dated April 1, 1937 Due April 1, 1962	30		30	
42. \$10,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 3½% Series Due 1967, Dated June 1, 1937 Due June 1, 1967				
43. 200,000 Shares Standard Brands, Incorporated \$4.50 Cumulative Preferred Stock (Without Par Value)	250	100	350	
44. \$25,000,000 New York Telephone Company Refunding Mortgage 3¼% Bonds, Series B, Due July 1, 1967, Dated July 1, 1937, Due July 1, 1967	30		30	
45. \$17,029,000. Buffalo Niagara Electric Corporation General and Refunding Mortgage 3½% Bonds, Series "C" Dated June 1, 1937 Due June 1, 1967	20		20	
46. \$3,420,000 Buffalo Niagara Electric Corporation Serial Debentures Series A, B, and C, Dated June 1, 1937, Due each June 1, 1938 to June 1, 1952 inclusive				
47. 500,000 Shares E. I. du Pont de Nemours and Company Preferred Stock—\$4.50 Cumulative (Without Par Value)	750		750	
48. \$25,000,000 Westchester Lighting Company General Mortgage Bonds, 3½% Series Due 1967 Dated July 1, 1937, Due July 1, 1967	30	35	65	
49. Ohio Edison Company First Mortgage Bonds 4% Series of 1937 Due 1967 Dated September 1, 1937, Due September 1, 1967	15		15	
50. \$48,364,000 Central New York Power Corporation General Mortgage Bonds, 3¼% Series Due 1962 Dated October 1, 1937, Due October 1, 1962	50		35	15
51. \$30,000,000 Consolidated Edison Company of New York Inc. Twenty-Year 3¼% Debentures, Series Due 1958 Dated January 1, 1938 Due January 1, 1958	25		25	
52. \$9,000,000 Consumers Power Company First Mortgage Bonds, 3½% Series of 1937 Due 1967 Dated November 1, 1937, Due November 1, 1967				
53. Duluth Missabe and Iron Range Railway Company First Mortgage 3¼% Bonds Due October 1, 1962 Dated October 1, 1937	25		10	
54. \$60,000,000 Consolidated Edison Company of New York, Inc. Ten-Year 3¼% Debentures, Series Due 1948 Dated April 1, 1938 Due April 1, 1948	50		50	
55. \$100,000,000 United States Steel Corporation Ten-Year 3¼% Debentures Dated June 1, 1938 Due June 1, 1948	75		75	
56. \$27,750,000 The Mountain States Telephone and Telegraph Company Thirty Year 3¼% Debentures Dated June 1, 1938 Due June 1, 1968	25		25	
57. \$50,000,000 Standard Oil Company (Incorporated in New Jersey) Fifteen Year 2¼% Debentures Dated July 1, 1938 Due July 1, 1953	40		40	
58. \$31,000,000 Standard Oil Company (Incorporated in New Jersey) Serial Notes due each July 1, from 1943 to 1947 inclusive	25		25	
59. \$28,900,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3% Bonds, Series C, Dated July 1, 1938, Due July 1, 1968	25		25	
60. \$10,000,000 Public Service Electric and Gas Company First and Refunding Mortgage Bonds, 3¼% Series Due 1968 Dated July 1, 1938, Due July 1, 1968				

EXHIBIT No. 2043—Continued

Issue	Part. or offer.	Subs.	Allot.	Repur.
61. \$27,982,000 New York Steam Corporation First Mortgage Bonds, 3½% Series Due 1963 Dated July 1, 1953, Due July 1, 1963	25		25	
62. \$25,000,000 Argentine Republic Ten Year Sinking Fund External Loan 4½% Bonds Dated November 1, 1938, Due November 1, 1948	15		15	
63. \$40,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds dated November 15, 1938 due November 15, 1968	35		35	
64. \$16,000,000 Railway Express Agency, Incorporated Serial Notes, Series A due each June 1 and Dec. 1, from June 1, 1939 to Dec. 1, 1948, incl.				
65. \$10,168,000 Consumers Power Company First Mortgage Bonds, 3¼% Series of 1936 due 1966, dated November 1, 1936, due November 1, 1966				
65. \$85,000,000 Shell Union Oil Corporation Fifteen Year 2½% Debentures Dated July 1, 1939, due July 1, 1954	60		33	
67. \$22,250,000 Southern Bell Telephone and Telegraph Company Forty Year 3% Debentures Dated July 1, 1939, Due July 1, 1979	20		20	

	Total under-writers profits	Total syndicate or selling group commission & profit		Total under-writers profits	Total syndicate or selling group commission & profit
1935		\$1,106.58	1937		\$4,093.75
1936		9,415.00	1938		2,556.25

Issue	Part. or Offer.	Subs.	Allot.	Repur.
1. \$19,172,000 Consumers Power Company First Lien and Unifying Mortgage Bonds 3½% Series of 1935, dated Oct. 1, 1935 due May 1, 1965	10		10	
2. \$20,000,000 The Dayton Power and Light Company First and Refunding Mortgage Bonds, 3½% Series Due 1960 Dated October 1, 1935, Due October 1, 1960	10		10	
3. \$43,700,000 Illinois Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B Dated October 1, 1935, Due October 1, 1970	15		15	
4. \$43,963,500 Ohio Edison Company First and Consolidated Mortgage Bonds 4% Series of 1935 due 1965, dated November 1, 1935 due November 1, 1965	15		15	
5. \$25,000,000 New York and Queens Electric Light and Power Company First and Consolidating Mortgage Bonds 3½% Series of 1935, Dated November 1, 1935 due November 1, 1965				
6. \$44,000,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B, dated December 1, 1935 due December 1, 1964	15		15	
7. \$55,000,000 The New York Edison Company, Inc. First Lien and Refunding Mortgage 3½% Bonds, Series D, Dated October 1, 1935 Due October 1, 1965	20		20	
8. \$7,178,500 Central Illinois Light Company First and Consolidated Mortgage Bonds 3½% Series Due 1966, Dated April 1, 1936 Due April 1, 1966				
9. \$55,830,000 Consumers Power Company First Mortgage Bonds 3½% Series of 1936 Due 1970. Dated March 1, 1936, Due November 1, 1970	20		20	
10. \$9,292,000. Louisville and Nashville Railroad Company First and Refunding Mortgage 4% Bonds, Series D. Dated August 1, 1931 Due April 1, 2003. Bearing interest from April 1, 1936				
11. \$40,000,000 The New York Central Railroad Company Ten Year 3¼% Secured Sinking Fund Bonds Dated April 1, 1936 Due April 1, 1946	20		20	
12. \$15,000,000 The New York Central Railroad Company Serial Secured Notes, Issue of 1936. Due April 1, 1937 to 1941 inclusive				
13. \$70,000,000 Consolidated Edison Company of New York, Inc. Debentures, \$35,000,000 Ten-Year 3¼% Series Due 1946, Dated April 1, 1936, Due April 1, 1946, \$35,000,000 Twenty-Year 3½% Series Due 1956, Dated April 1, 1936, Due April 1, 1956	20		20	

EXHIBIT No. 2043—Continued

Issue	Part. or offer.	Subs.	Allot.	Repr.
14. \$30,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3½% Bonds, Series B, Dated April 1, 1936, Due April 1, 1966.				
15. \$40,362,000 The Chesapeake and Ohio Railway Company, Refunding and Improvement Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1966.	20		20	
16. \$24,000,000 The Cincinnati Union Terminal Company First Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1971.				
17. \$22,727,000 Chicago and Western Indiana Railroad Company, First and Refunding Mortgage 4¼% Series D, Sinking Fund Bonds, Dated March 1, 1936, Due September 1, 1962.	10	25	35	
18. \$55,000,000 Brooklyn Edison Company, Inc. Consolidating Mortgage Bonds, 3¼% Series of 1936, Dated May 15, 1936, Due May 15, 1966.	25		25	
19. Standard Oil Company (Incorporated in New Jersey) Twenty-Five Year 3% Debentures. Dated June 1, 1936, due June 1, 1961.	15		15	
20. \$12,000,000 Crane Co., Fifteen-Year 3½% Sinking Fund Debentures, Dated June 1, 1936, Due June 1, 1951.	10		10	5
21. \$32,493,000 The Niagara Falls Power Company First and Refunding Mortgage Bonds, 3½% Series of 1936, Dated March 1, 1936 Due March 1, 1966.	15		15	
22. \$26,000,000 Louisville and Nashville Railroad Company, First and Refunding Mortgage 3¾% Bonds, Series E, Dated August 1, 1921, Due April 1, 2003, Bearing Interest from April 1, 1936.	15	24	39	
23. \$15,300,000 The Chesapeake and Ohio Railway Company, Serial Notes, Issue of 1936, Dated July 15, 1936, Due \$1,530,000 Annually on July 15, from 1937 to 1946, both inclusive.				
24. \$13,827,000 Indianapolis Water Company, First Mortgage Bonds, 3½% Series Due 1966, Dated July 1, 1936, Due July 1, 1966.				
25. \$30,000,000 The New York Edison Company, Inc., First Lien and Refunding Mortgage 3¾% Bonds, Series E, Dated April 1, 1936, Due April 1, 1966.	25		25	
26. \$29,550,000 The Chesapeake and Ohio Railway Company Refunding and Improvement Mortgage 3½% Bonds, Series E, Dated August 1, 1936, Due August 1, 1966.				
27. \$100,000,000 General Motors Acceptance Corporation Debentures, \$50,000,000 Ten-Year 3% Series Due 1946, Dated August 1, 1936, Due August 1, 1946, \$50,000,000 Fifteen-Year 3¼% Series Due 1951, Dated August 1, 1936, Due August 1, 1951.	40		40	
28. \$35,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 3¼% Series Due 1966, Dated August 1, 1936 Due August 1, 1966.	25		25	
29. \$150,000,000 American Telephone and Telegraph Company, Twenty-Five Year 3¼% Debentures, Dated October 1, 1936, Due October 1, 1961.	75		75	
30. \$23,500,000 Argentine Republic, Sinking Fund External Conversion Loan 4½% Bonds, Dated November 15, 1936, Due November 15, 1971.	20		20	
31. \$140,000,000 American Telephone and Telegraph Company, Thirty Year 3¼% Debentures, Dated December 1, 1936, Due December 1, 1966.	75		75	
32. \$12,000,000 Consumers Power Company, First Mortgage Bonds, 3¼% Series of 1936 Due 1966, Dated November 1, 1936, Due November 1, 1966.				
33. \$25,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3¼% Bonds Series C, Dated December 1, 1936, Due December 1, 1966.	25		25	
34. \$26,834,000 Ohio Edison Company First Mortgage Bonds 3½% Series of 1937 Due 1972, Dated January 1, 1937, Due January 1, 1972.	20	10	20	
35. \$50,000,000 Great Northern Railway Company General Mortgage 3½% Bonds, Series I, Dated January 1, 1937, Due January 1, 1967.	150		150	
36. \$30,000,000 Government of the Dominion of Canada Seven Year 2½% Bonds, Dated January 15, 1937, Due January 15, 1944.	20		20	
37. \$55,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds, Dated January 15, 1937, Due January 15, 1967.	40		40	
38. \$70,000,000 Argentine Republic Sinking Fund External Conversion Loan 4% Bonds, Dated February 15, 1937, Due February 15, 1972.	50	5	50	
39. \$130,000,000 Philadelphia Electric Company First and Refunding Mortgage Bonds, 3½% Series Due 1967, Dated March 1, 1937, Due March 1, 1967.	75		75	
40. \$35,000,000 Argentine Republic Sinking Fund External Conversion Loan 4% Bonds Dated April 15, 1937, Due April 15, 1972.	20		20	
41. \$42,500,000 Southern Bell Telephone and Telegraph Company Twenty-Five Year 3¼% Debentures, Dated April 1, 1937 Due April 1, 1962.	25		25	
42. \$10,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 3¼% Series Due 1967, Dated June 1, 1937 Due June 1, 1967.				
43. 200,000 Shares Standard Brands, Incorporated \$4.50 Cumulative Preferred Stock (Without Par Value).	300	35	335	
44. \$25,000,000 New York Telephone Company Refunding Mortgage 3¼% Bonds, Series B, Due July 1, 1967, Dated July 1, 1937, Due July 1, 1967.	25		25	

EXHIBIT No. 2043—Continued

Issue	Part. or Offer	Subs.	Allot.	Repur.
45. \$17,029,000. Buffalo Niagara Electric Corporation General and Refunding Mortgage 3½% Bonds, Series "C" Dated June 1, 1937 Due June 1, 1967.	15		15	
46. \$3,420,000 Buffalo Niagara Electric Corporation Serial Debentures Series A, B, and C, Dated June 1, 1937, Due each June 1, 1938 to June 1, 1952 inclusive.				
47. 500,000 Shares E. I. du Pont de Nemours and Company Preferred Stock—\$4.50 Cumulative (Without Par Value)	600		600	
48. \$25,000,000 Westchester Lighting Company General Mortgage Bonds, 3½% Series Due 1967 Dated July 1, 1937, Due July 1, 1967	20		20	
49. Ohio Edison Company First Mortgage Bonds 4% Series of 1937 Due 1967 Dated September 1, 1937, Due September 1, 1967.	15		15	
50. \$48,364,000 Central New York Power Corporation General Mortgage Bonds, 3¾% Series Due 1962 Dated October 1, 1937, Due October 1, 1962	30		30	
51. \$30,000,000 Consolidated Edison Company of New York, Inc. Twenty-Year 3½% Debentures, Series Due 1958 Dated January 1, 1938 Due January 1, 1958.	25		25	
52. \$9,000,000 Consumers Power Company First Mortgage Bonds, 3½% Series of 1937 Due 1967 Dated November 1, 1937, Due November 1, 1967.				
53. Duluth Missabe and Iron Range Railway Company First Mortgage 3½% Bonds Due October 1, 1962 Dated October 1, 1937.	75		75	
54. \$60,000,000 Consolidated Edison Company of New York, Inc. Ten-Year 3½% Debentures, Series Due 1948 Dated April 1, 1938 Due April 1, 1948.	35		35	
55. \$100,000,000 United States Steel Corporation Ten-Year 3¾% Debentures Dated June 1, 1938, Due June 1, 1948.	65		65	
56. \$27,750,000 The Mountain States Telephone and Telegraph Company Thirty Year 3¾% Debentures Dated June 1, 1938 Due June 1, 1968.	25		25	
57. \$50,000,000 Standard Oil Company (Incorporated in New Jersey) Fifteen Year 2¾% Debentures Dated July 1, 1938 Due July 1, 1953	35		35	
58. \$31,000,000 Standard Oil Company (Incorporated in New Jersey) Serial Notes due each July 1, from 1943 to 1947 inclusive.				
59. \$28,900,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3% Bonds, Series C, Dated July 1, 1938, Due July 1, 1968.	25		25	
60. \$10,000,000 Public Service Electric and Gas Company First and Refunding Mortgage Bonds, 3¾% Series Due 1968 Dated July 1, 1938, Due July 1, 1968.				
61. \$27,982,000 New York Steam Corporation First Mortgage Bonds, 3½% Series Due 1963 Dated July 1, 1938, Due July 1, 1963.	25		25	
62. \$25,000,000 Argentine Republic Ten Year Sinking Fund External Loan 4½% Bonds Dated November 1, 1938, Due November 1, 1948.	20	5	25	
63. \$40,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds dated November 15, 1938 due November 15, 1968.	30		30	
64. \$16,000,000 Railway Express Agency, Incorporated Serial Notes, Series A due each June 1 and Dec. 1, from June 1, 1939 to Dec. 1, 1948, incl.				
65. \$10,168,000 Consumers Power Company First Mortgage Bonds, 3¾% Series of 1936 due 1966, dated November 1, 1936, due November 1, 1966.				
66. \$85,000,000 Shell Union Oil Corporation Fifteen Year 2½% Debentures Dated July 1, 1939, due July 1, 1954.	75	10	85	
67. \$22,250,000 Southern Bell Telephone and Telegraph Company Forty Year 3% Debentures Dated July 1, 1939, Due July 1, 1979.	20		20	

	Total under-writers profits	Total syndicate or selling group commission & profit		Total under-writers profits	Total syndicate or selling group commission & profit
1935.		\$592.57	1937.		\$5,293.75
1936.		3,936.25	1938.		2,818.75

EXHIBIT No. 2043—Continued

Issue	Part. or offer.	Subs.	Allot.	Reprn.
1. \$19,172,000 Consumers Power Company First Lien and Unifying Mortgage Bonds, 3½% Series of 1935, dated October 1, 1935, due May 1, 1965.	200		200	
2. \$20,000,000, The Dayton Power and Light Company First and Refunding Mortgage Bonds, 3½% Series Due 1960 Dated October 1, 1935, due October 1, 1960.	200		200	
3. \$43,700,000 Illinois Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B Dated October 1, 1935, Due October 1, 1970.	350		50	
4. \$43,963,500 Ohio Edison Company First and Consolidated Mortgage Bonds 4% Series of 1935 due 1965, dated November 1, 1935 due November 1, 1965.	P 2,000		500	
5. \$25,000,000 New York and Queens Electric Light and Power Company First and Consolidating Mortgage Bonds 3½% Series of 1935, Dated November 1, 1935, due November 1, 1965.	-P 1,500		750	
6. \$44,000,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3½% Bonds, Series B, dated Decembsr 1, 1935, due December 1, 1964.	500		500	
7. \$55,000,000 The New York Edison Company, Inc., First Lien and Refunding Mortgage 3½% Bonds, Series D, Dated October 1, 1935, Due October 1, 1965.	P 2,500		1,500	
8. \$7,178,500 Central Illinois Light Company First and Consolidated Mortgage Bonds, 3½% Series Due 1966, Dated April 1, 1936, Due April 1, 1966.	100		100	
9. \$55,830,000, Consumers Power Company First Mortgage Bonds 3½% Series of 1936, Due 1970, Dated March 1, 1936, Due November 1, 1970.	P 1,000		700	
10. \$9,292,000, Louisville and Nashville Railroad Company First and Refunding Mortgage 4% Bonds, Series D, Dated August 1, 1931, April 1, 2003. Bearing interest from April 1, 1936.	200		200	
11. \$40,000,000 The New York Central Railroad Company Ten Year 3½% Secured Sinking Fund Bonds Dated April 1, 1936, Due April 1, 1946.	P 1,000		600	
12. \$15,000,000 The New York Central Railroad Company Serial Secured Notes, Issue of 1936, Due April 1, 1937 to 1941 Inclusive.	P 375		375	
13. \$70,000,000 Consolidated Edison Company of New York, Inc., Debentures, \$35,000,000 Ten-Year 3½% Series Due 1946, Dated April 1, 1936, Due April 1, 1946, \$35,000,000 Twenty-Year 3½% Series, Due 1956, Dated April 1, 1936, Due April 1, 1956.	P 3,000		2,500	
14. \$30,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3½% Bonds, Series B, Dated April 1, 1936, Due April 1, 1966.	350		350	
15. \$40,362,000 The Chesapeake and Ohio Railway Company, Refunding and Improvement Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1966.	P 2,000	171	171 750	25
16. \$24,000,000 The Cincinnati Union Terminal Company First Mortgage 3½% Bonds, Series D, dated May 1, 1936, due May 1, 1971.	S. U. 1,000 500		500	
17. \$22,727,000 Chicago and Western Indiana Railroad Company, First and Refunding Mortgage 4½%, Series D, Sinking Fund Bonds, Dated March 1, 1936, Due September 1, 1962.	400		400	150
18. \$55,000,000 Brooklyn Edison Company, Inc. Consolidating Mortgage Bonds, 3¼% Series of 1936, Dated May 15, 1936, Due May 15, 1966.	P 2,500		1,500	
19. Standard Oil Company (Incorporated in New Jersey) Twenty-Five Year 3% Debentures, Dated June 1, 1936, due June 1, 1961.	P 1,500		600	
20. \$12,000,000 Crane Co., Fifteen-Year 3½% Sinking Fund Debentures, Dated June 1, 1936, Due June 1, 1951.	200		200	
21. \$32,493,000 The Niagara Falls Power Company First and Refunding Mortgage Bonds, 3½% Series of 1936, Dated March 1, 1936, Due March 1, 1966.	350		350	
22. \$26,000,000 Louisville and Nashville Railroad Company, First and Refunding Mortgage 3¾% Bonds, Series E, Dated August 1, 1921, due April 1, 2003. Bearing interest from April 1, 1936.	S. U. 1,500 600		600	10
23. \$15,300,000 The Chesapeake and Ohio Railway Company, Serial Notes, Issue of 1936, Dated July 15, 1936, Due \$1,530,000 Annually on July 15, from 1937 to 1946, both inclusive.	P 800		800	
24. \$13,827,000 Indianapolis Water Company, First Mortgage Bonds, 3½% Series Due 1966, Dated July 1, 1936, Due July 1966.	150		150	
25. \$30,000,000 The New York Edison Company, Inc., First Lien and Refunding Mortgage 3¾% Bonds, Series E, Dated April 1, 1936, Due April 1, 1966.	S. U. 1,250 750		750	
26. \$29,500,000 The Chesapeake and Ohio Railway Company Refunding and Improvement Mortgage 3½% Bonds, Series E, Dated August 1, 1936, Due August 1, 1966.	P 1,450		600	
27. \$100,000,000 General Motors Acceptance Corporation Debentures, \$50,000,000 Ten-Year 3% Series Due 1946, Dated August 1, 1936, Due August 1, 1946, \$50,000,000 Fifteen-Year 3¼% Series Due 1951, Dated August 1, 1936, Due August 1, 1961.	P 3,000		2,500	

EXHIBIT No. 2043—Continued

Issue	Part. or offer.	Subs.	Allot.	Repur.
23. \$35,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 5½% Series Due 1966, Dated August 1, 1936, Due August 1, 1966.	450		450	
29. \$150,000,000 American Telephone and Telegraph Company, Twenty-five Year 3¼% Debentures, Dated October 1, 1936, Due October 1, 1961.	P 4,000		3,000	
30. \$23,500,000 Argentine Republic, Sinking Fund External Conversion Loan 4½% Bonds, Dated November 15, 1936, Due November 15, 1971.	P 1,250		500	
31. \$140,000,000 American Telephone and Telegraph Company, Thirty Year 3¼% Debentures, Dated December 1, 1936, Due December 1, 1966.	P 3,200		3,000	
32. \$12,000,000 Consumers Power Company, First Mortgage Bonds, 3¼% Series of 1936 Due 1966, Dated November 1, 1936, Due November 1, 1966.	300		300	
33. \$25,000,000 The Pacific Telephone and Telegraph Company, Refunding Mortgage 3¼% Bonds Series C, Dated December 1, 1936, Due December 1, 1966.	300	100	350	
34. \$26,834,000 Ohio Edison Company First Mortgage Bonds 3¾% Series of 1937 Due 1972, Dated January 1, 1937, Due January 1, 1972.	P 1,100	121	400	12
35. \$50,000,000 Great Northern Railway Company General Mortgage 3¾% Bonds, Series L, Dated January 1, 1937, Due January 1, 1967.	S. U. 2,000			
36. \$30,000,000 Government of the Dominion of Canada Seven Year 2¼% Bonds, Dated January 15, 1937, Due January 15, 1944.	800	100	840	80
37. \$55,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds, Dated January 15, 1937, Due January 15, 1967.	P 706		530	
38. \$70,000,000 Argentine Republic Sinking Fund External Conversion Loan, 4% Bonds, Dated February 15, 1937, Due February 15, 1972.	P 1,294		970	526
39. \$130,000,000 Philadelphia Electric Company First and Refunding Mortgage Bonds, 3½% Series Due 1967, Dated March 1, 1937, Due March 1, 1967.	P 3,000	250	1,300 Taken up. 40	68
40. \$35,000,000 Argentina Republic Sinking Fund External Conversion Loan 4% Bonds Dated April 15, 1937, Due April 15, 1972.	P 1,500	250	2,000	
41. \$42,500,000 Southern Bell Telephone and Telegraph Company Twenty-Five Year 3¼% Debentures, Dated April 1, 1937 Due April 1, 1962.	P 1,000		650	220
42. \$10,000,000 The Cincinnati Gas & Electric Company First Mortgage Bonds, 3¼% Series Due 1967, Dated June 1, 1937 Due June 1, 1967.	P 10,000		700	
43. 200,000 Shares Standard Brands, Incorporated \$4.50 Cumulative Preferred Stock (Without Par Value).	P 200	30	3,500	500
44. \$25,000,000 New York Telephone Company Refunding Mortgage 3¼% Bonds, Series B, Due July 1, 1967, Dated July 1, 1937, Due July 1, 1967.	450		70	11
45. \$17,029,000 Buffalo Niagara Electric Corporation General and Refunding Mortgage 3¼% Bonds, Series "C" Dated June 1, 1937 Due June 1, 1967.	275		275	5
46. \$3,420,000 Buffalo Niagara Electric Corporation Serial Debentures Series A, B, and C, Dated June 1, 1937, Due each June 1, 1938 to June 1, 1952, Inclusive.	75		75	
47. 500,000 Shares E. I. du Pont de Nemours and Company Preferred Stock—\$4.50 Cumulative (Without Par Value).	P 15,000		7,500	
48. \$25,000,000 Westchester Lighting Company General Mortgage Bonds, 3¼% Series Due 1967 Dated July 1, 1937, Due July 1, 1967.	P 1,250		625	185
49. Ohio Edison Company First Mortgage Bonds 4% Series of 1937 Due 1967 Dated September 1, 1937, Due September 1, 1967.	150		150	
50. \$48,364,000 Central New York Power Corporation General Mortgage Bonds 3¾% Series Due 1962 Dated October 1, 1937, Due October 1, 1962.	P 1,500	200	200	
51. \$30,000,000 Consolidated Edison Company of New York, Inc., Twenty-Year 3¼% Debentures, Series Due 1958 Dated January 1, 1938, Due January 1, 1958.	P 1,285		950	
52. \$9,000,000 Consumers Power Company First Mortgage Bonds, 3¼% Series of 1937 Due 1967 Dated November 1, 1937, Due November 1, 1967.	150		150	
53. Duluth Missabe and Iron Range Railway Company First Mortgage 3¾% Bonds Due October 1, 1962 Dated October 1, 1937.	S. U. 1,000		700	
54. \$60,000,000 Consolidated Edison Company of New York, Inc. Ten-Year 3¼% Debentures, Series Due 1948 Dated April 1, 1938 Due April 1, 1948.	700			
55. \$100,000,000 United States Steel Corporation Ten Year 3¼% Debentures Dated June 1, 1938, Due June 1, 1948.	P 2,500		1,250	
56. \$27,750,000 The Mountain States Telephone and Telegraph Company Thirty Year 3¼% Debentures Dated June 1, 1938 Due June 1, 1968.	P 9		500	
57. \$50,000,000 Standard Oil Company (Incorporated in New Jersey) Fifteen Year 2¾% Debentures Dated July 1, 1938 Due July 1, 1953.	P 1,545		800	
58. \$31,000,000 Standard Oil Company (Incorporated in New Jersey) Serial Notes due each July 1, from 1943 to 1947 inclusive.	P 955		600	

EXHIBIT No. 2043--Continued

Issue	Part. or offer.	Subs.	Allot.	Repur.
59. \$28,900,000 Southwestern Bell Telephone Company First and Refunding Mortgage 3% Bonds, Series C, Dated July 1, 1938, Due July 1, 1968.	P 600		500	
60. \$10,000,000 Public Service Electric and Gas Company First and Refunding Mortgage Bonds, 3 3/4% Series Due 1968 Dated July 1, 1938, Due July 1, 1968.	200 P		200	
61. \$27,982,000 New York Steam Corporation First Mortgage Bonds, 3 3/4% Series Due 1963 Dated July 1, 1938, Due July 1, 1963.	1,138 P	150	600	5
62. \$25,000,000 Argentine Republic Ten Year Sinking Fund External Loan 4 1/2% Bonds Dated November 1, 1938, Due November 1, 1948.	1,000 P		500	21
63. \$40,000,000 Government of the Dominion of Canada Thirty Year 3% Bonds, dated November 15, 1938 due November 15, 1968.	800 P		500	
64. \$16,000,000 Railway Express Agency, Incorporated Serial Notes, Series A due each June 1 and Dec. 1, from June 1, 1939 to Dec. 1, 1948, incl.	350		350	
65. \$10,168,000 Consumers Power Company First Mortgage Bonds, 3 3/4% Series of 1936 due 1966, dated November 1, 1936, due November 1, 1966.	175 P	Taken up 206	175	
66. \$85,000,000 Shell Union Oil Corporation Fifteen Year 2 1/2% Debentures Dated July 1, 1939, due July 1, 1954.	3,000 P		1,500	5
67. \$22,250,000 Southern Bell Telephone and Telegraph Company Forty Year 3% Debentures Dated July 1, 1939, Due July 1, 1979.	530		350	

	Total under- writers profits	Total syn- dicate or selling group com- mission & profit		Total under- writers profits	Total syn- dicate or selling group com- mission & profit
1935.....	\$42,168.52	\$10,856.70	1937.....	\$224,392.34	\$14,973.75
1936.....	354,433.21	33,412.50	1938.....	149,772.26	9,333.45

MEMORANDA

Jan. 2, 1937. Mr. ——— called to say that his firm was established January 1, 1936 and requested participations in issues which we underwrite. Their capital is \$75,000 of which \$50,000 is in cash—balance in securities. They now have 8 salesmen, 3 of whom devote their entire time to the distribution of corporate bonds in and around Philadelphia. For the past year their bond volume has been approximately 75% corporates—25% municipal issues. In addition to covering the large institutional accounts in the city they have many private investor clients. 4M Philadelphia Electric 3 3/8s repurchased below the offering price after removal of price restrictions.

Dec. 13, 1937. Mr. ——— called to advise that in connection with their allotment of 15M Philadelphia Electric 3 3/8s, they had distributed the bonds to six different accounts. Mentioned the fact that they now also receive participations from a number of other underwriters.

Feb. 11, 1938. Visited this firm and talked with Mr. ——— and Mr. ———. Capital remains unchanged. Now have 10 salesmen, 4 of whom devote most of their time to the distribution of high-grade corporate bonds. Stated that private investors were practically out of the market for low coupon bonds but that there has been some buying by Trust Funds. Stated that with their increased distribution and sales force they would like to be considered for larger amounts.

Dec. 2, 1938. Mr. ——— wrote, stating that they had recently opened an office in Wilmington. There will be one salesman in this office who will cover Wilmington, Baltimore and Washington. Mr. ——— who had left this firm in 1937 has now rejoined them as a vice president. He sells mostly to trust accounts in the larger banks in Philadelphia.

Feb. 3, 1939. Messrs. ——— and ——— called. Stated that the distribution in 1938 of corporate bonds had been approximately \$3,000,000—mostly to institutions. Capital remains \$75,000.

Aug. 10, 1939. Mr. ——— called and after discussing present bond markets said they had declined 20M Shell Union Oil Debentures due to the fact that they had been unable to distribute them to their clients and did not feel justified in retaining the bonds for their own account inasmuch as the selling commission was only 1/2 point.

EXHIBIT No. 2044

[Sample of dealer performance record card used by Kidder, Peabody & Co.]

GRAHAM, PARSONS & Co.,

14 Wall St., New York, N. Y.

10/22/35—Stone & Webster—175 M Virginia E. & P. 4s.

7/1/35—First Boston—150 M So. Calif. Ed. "B" 3%.

7/18/35— " " —300 M Duquesne L. 3½.

12/5/35—Brown Harriman—750 shs. Virginian Rwy. 6% Pfd.

1/3/36—K P & Co.—300 shs. Food Machinery Corp. 4½ Pfd.

6/15/36— " —1370 shs. Commercial Credit 4¼ Pfd.—200 shs. repurchased.

10/8/36— " —500 M Commercial Credit 3¼% Debs. 1951—Underwriter.

Sept. 1936—Coffin & Burr—50 M Detroit Edison 3½ 1966.

10/21/36—Brown Harriman—Declined Distillers Seagrams 5% Pfd.

2/3/37—Lazard Freres—26 M Kingdom Norway 4s 1963.

June 1937—K. P. & Co.—Underwrote 500 M Commercial Credit 2¾ 1942.

Aug. 1939—A. C. Allyn—25 M Iowa Public Service 3¾ 1969

EXHIBIT No. 2045

[Sample of dealer performance record card used by White, Weld & Co.]

DISTRIBUTING ABILITY: Fair. 2/15/24

CREDIT STANDING:

JANUARY 1935—Registered under the Code

RATING -----

REMARKS: 2/15/24: Formerly ----- In Feb. 1923, this latter firm succeeded ----- Correspondents of ----- 2/24/26: Interviewed -----

Also met ----- at ----- Specialize in Utilities having good marketability. Are very keen on ----- Stocks. Also like

certain Industrials. Oct. 1926: ----- and ----- visited with me during the IBA Convention held at Quebec. 3/3/31: Probably the second best

dealer distributor in ----- Very close to ----- Sold to date -----

-----, a good friend, and best man in the organization. May 17, 1935: Acquired Seat on the New York Stock Exchange. 5/31/39: Announcement received to the effect that ----- formerly partner in -----

----- is now associated with -----

EXHIBIT No. 2045 (Continued)

Date	Security	Special Position	Syndicate Participation	Total Allotment	After sales		Repurchases			Syndicate Managers or Remarks
					During Life of %	After Close of %	During Life of %	After Close of %		
								Penalty	No. Per.		1st Month	Next 2 Mos.
12/9/26	Prov Buenos Aires 7/57			SG 7						
1/25/27	Solvay Amn Inv 5/42			SG 75						
7/12/27	Springfield G & E 5/57			25						
3/16/27	S. of Pernambuco 7/47		BG 40	40			5			
11/23/27	M B of Norway 5/64			Declined						
2/1/28	Rio de Janeiro 6/2/53			"						
2/15/28	Cent Ark Pub 8/25/48			50						
7/11/28	Rio Grande D S 6/68			Declined						
4/10/29	Garlock Packing Corn. Stk			2,500 shs						
	Garlock Packing 6% Deb			125M		10M				
4/1/29	Garlock Packing Co. 6% Deb. & Com. Pur. Gr. #2 1 1/2% ceded out of W. W. & Co.'s own part.									
10/7/29	Marine Midland Corp			7 000					thru Synd	
3/28/30	Gen Baking Co 6/2/40		BG 60	60						
7/18/30	Pac Pow and Lt 1-5/55			10						
7/14/35	Allegh Steel Co. Common			400 shs						
6/5/36	El Paso Nat. Gas 4 3/4s 1951			70M						
6/5/36	" " " 4 3/4 Deb. 1946			35M						
9/11/36	El Paso Nat. Gas Co. common			700 shs. ¹						
12/8/36	Con. Gas of Balt. 3 1/4/1971			125M						
6/28/39	Wash. Water Pwr 3 1/2s 1964			100M						
7/25/39	Seversky Aircraft Corp. Conv. 1st Pfd. Stk. Ser A			1,000 shs						
9/18/39	Durez Plastics & Chemicals, Inc. 4 1/2% Conv. Deb. due 1949		\$250M prin. amt. in Underwriting Group						Retained \$200M prin. amt. for retail	

¹ In addition, we gave above 200 shs. of stk. @ retail price

EXHIBIT No. 2045 (Continued)

9/18/39: \$1,600,000 DUREZ PLASTICS & CHEMICALS, INC. Ten Year 4½% Convertible Debentures due Sept. 1, 1949 (conversion rights expire at latest on 5/31/49)—Group headed by W. W. & Co., Mgr., together with _____ and the above in which our underwriting commitment was \$675M prin. amt. of which we gave up to S. D. \$375M prin. amt. at 100% (2% s.c. payable later), purchased issue from the company at 95½%+*. S. C. 2% with no reallocation. We retained for retail \$400M prin. amt. of Debs. divided New York \$180M and Boston \$120M. Pub. Offg. Price 100%+. Underwriting compensation 2½%. Reception: Good.* Plus Accd. int. from Sept. 1, 1939 to date of delivery.

EXHIBIT No. 2046

[Sample of dealer performance record cards used by Mellon Securities Corporation]

SYNDICATE BUSINESS ALLOCATED

JOHN DOE & COMPANY
(Name of dealer)

Issuer	Title of issue	Dealers participation			Gross profits	Remarks
		Under-writing	Special	Selling		
Jones & Laughlin Steel Co.	1st Mtg. 4¼s of 1961.	1,000,000	-----	400,000	(Occasionally gross profits are entered in this column).	Joint Mgr. with First Boston.
Eastern Gas & Fuel.	1st Mtg. 4s of 1956	1,500,000	-----	1,000,000		
Koppers Company.	1st Mtg. 4s of 1951.	500,000	-----	300,000		Joint Mgr. with Smith and Kuhn Loeb.
Bethlehem Steel....	Conv. Deb. 3½s, of 1952	750,000	-----	600,000		
San Antonio Public Serv.	1st Mtg. 4s of 1963.	1,000,000	-----	400,000		Joint Mgr. with Dillon, Read & Co.
Lone Star Gas.....	3½% Deb. of 1953.	1,500,000	100,000	500,000		Joint Mgr. with Dillon, Read & Co.
Michigan Cons.....	1st Mtg. 4s of 1963.	200,000	-----	100,000		
Saguenay Power.....	4¼s of 1966.....	-----	-----	100,000		50,000 declined. An additional hundred taken.
Lone Star Gas.....	3½% Deb. of 1953.	-----	-----	-----		

EXHIBIT No. 2047-1

[Sample of dealer performance record card used by Harriman Ripley & Co., Incorporated]

(Specimen copy)

X, Y & Z Co. 10 Wall Street, New York City (1928)	Class	Date Changed	Rate
	B-Und	10/20/38	2
	A-Und		1
Contact: Mr. X Capital (Est.): \$250,000 Date: 12/31/37 \$275,000 Date: 11/30/38 Distribution: 40-100 Clientele: Inst. X Bks. X Country Bks. Indiv. X Inv. Trs. Territory: Urban Rural Specialty: Mbr. NYSE	No. Salesmen 15 Offices Phila. Boston Hartford	Name Mr. X Mr. Z	Date 6/38 4/39

Character and Reputation:

History: Formerly Y Z Co. Mr. X formerly with A B C Co.

[Specimen copy]

Date	Issue	Under-writing interest		Offered	Accepted	Additional	Total sales	Repurchases	
								P.	N. P.
1934									
11/26	Finland 4s, 1936-40		S		20		20		
1935									
5/3	Atl. Coast Line 5s, 1945		S		35		35		10 1/2
12/5	Virginian Rwy. 6% Pfd.				500		500		
12/20	Sou West Gas & El 4s, 1960				60		50	15	
1936									
3/6	Virginian Rwy 3 3/4s, 1966			75	75		75		
4/7	Norway 4 1/2s, 1965			50	35	10	45		
5/1	B. M. T. 4 1/2s, 1966	295					250	15	
5/1	B. M. T. Ser. 3s, 1937/41								
	3 3/4s 42-51	205					200		
10/21	Dist Seag 5% Pfd			500	De- clined				
1937									
3/8	Spegel Inc. \$4.50 Pfd			500	500		500		50 1/2
12/8	West Va P&P 4 1/2s, 1952			40	40		40		
1938									
7/20	Ind Rayon 1st 4 1/2s, 1948			50	50	25	75		
10/26	Firestone T&R Deb 3 1/2s, 1948	150					135		
1939									
3/21	Natl Dist Deb 3 1/2s, 1940			75	75		75		
Dealer: N, Y & Z Co.		B. G. A.		A.		B.		New York City.	

EXHIBIT No. 2047-2

[Prepared by Harriman Ripley & Co., Incorporated]

Memorandum of October 16, 1939

THE SYNDICATION OF NEW ISSUES OF CORPORATE SECURITIES

No clear-cut rules-of-thumb can be followed in the formation of selling groups. The circumstances surrounding each offering usually vary, and all factors must be considered in arriving at decisions concerning the composition of a group. No more than a few of these factors can be discussed in this memorandum, which outlines the general principles underlying the formation of selling groups and reviews some of the specific problems encountered.

GENERAL PRINCIPLES

Those responsible for the formation of selling groups must give primary consideration to three basic factors when a new issue of securities is about to be offered to the public. These three basic factors are:

- The state of the then existing market for securities,
- The character of the issue to be offered—whether investment or speculative characteristics predominate—whether it is an issue of bonds, preferred stock or common stock, and
- The size of the total commitment about to be undertaken.

Each of these three basic factors may profoundly affect the syndication of an issue. Those responsible for syndication must plan the arrangements with respect to each issue in the light of these factors and, in so doing, determine the identity and aggregate number of dealers to be included in the selling group. The objective is to achieve distribution with a broad group of ultimate investors who, under the market conditions prevailing at the time, represent the most desirable market for an issue of the quality, type and size of the issue to be offered.

It is seldom an easy matter to determine the number and identity of the dealers to be included in the selling group for an issue of a particular size, type and quality and under a given set of market conditions. The selling group should generally include a substantial number if the issue is large, and a smaller number if the issue is small, but market conditions or other factors frequently are such that this customary procedure may be inadvisable.

Managing underwriters endeavor to select as members of a selling group those dealers who, under the circumstances then prevailing, appear best qualified to assist in successful distribution of the offering. The managing underwriter of an issue reaches decisions in this respect on the basis of information which he has collected concerning the special qualifications of each dealer.

It merits emphasis that the success with which a managing underwriter syndicates issues is in large measure due to the experience developed by the officers or partners of the house over a period of years in the selection of members of selling groups, for a variety of issues and under a variety of market conditions. It is this background of experience which really counts. The syndicate lists, syndicate records and classification systems built up by the syndicate departments of the leading underwriting houses are merely tools to assist the officers or partners of a managing underwriter in arriving at decisions with respect to the composition of selling groups. The tools should not be considered as automatic in their operation. They prove useful only in the light of the experience and judgment of those making use of the tools.

THE SYNDICATE LIST

A typical syndicate list provides a working list from which dealers to be offered participations in selling groups are selected.

A typical syndicate list will include the names of virtually all of the leading investment banking houses of the country which have sufficient capital to engage in underwriting on a sizable scale. In addition, such a list will include the names of those who are believed to be the leading dealers in each of the more important financial centers throughout the country. It will also include a number of smaller dealers both in the large cities and smaller cities and towns, who have demonstrated their ability to distribute issues. In general, it can be said that syndicate managers are always glad to talk with dealers who wish to be placed on syndicate lists and to hear from them the reasons why they think they should be included in selling groups. Careful consideration is given to the facts made available by dealers in the course of such discussions and in general practice names are added if it appears that the applicant-dealers can make a real contribution to the success of the distribution of issues, always provided, of course, that the syndicate manager consulted is satisfied that the applicant-dealers are of good character and reputation.

A dealer whose name appears on a typical syndicate list is by no means assured that he will be offered a selling group participation in all issues publicly offered by the underwriter concerned. Most selling groups range in size between one-quarter and three-quarters of the aggregate number of dealers whose names appear in a typical list. The size of the group in any particular instance depends upon the quality, type and size of the issue and on market conditions prevailing at the time of offering. Dealers are chosen on the basis of their ability to contribute to successful solution of the distribution problem presented by the issue.

It is generally the case when a selling group is formed that a number of dealers who had not previously appeared in a typical syndicate list will be included in the group. Some of these may subsequently remain on the syndicate list. Other names will be removed. Many well-established businesses depend for their effectiveness on the ability of one man. When he retires, dies or is incapacitated, the business no longer occupies the same position in the industry. Other dealers go down-hill for other reasons. Newer and more vigorous organizations replace them and over a period of time additions to a typical syndicate list will be about as numerous as removals. The number of names on a typical list remains fairly constant.

Information concerning dealers becomes available to a managing underwriter in various ways of which the most important are conversations between the syndicate manager and dealers, and inspection of the record of past performance by dealers on issues managed by the underwriter. Each managing underwriter has his own system for gathering this information into its syndicate records in a form convenient for instant use when the occasion arises. In this memorandum we are discussing a typical list and the system employed in keeping it up to date.

THE SYNDICATE RECORDS

In the case of the typical list under discussion, information about dealers obtained by the syndicate department is condensed into a brief record which is entered on "Syndicate Record Cards" and revised from time to time as new

information becomes available. Part of this information is obtained during business calls at the principal office of the underwriter by dealers and their representatives, during business trips by the partners or officers of the underwriter in charge of syndicate operations to various financial centers, and from reports by managers and representatives of branch offices. The most important portion of the information is a record of the past performance of each dealer in the distribution of issues made available to him from time to time.

A syndicate department must know the answers to the following questions about dealers: To what extent does a dealer succeed in finding buyers in his territory for various types of securities? Is he a specialist in bonds suitable for institutional investment and is he outstandingly successful or only moderately so in meeting the demands of this market? *Has the dealer developed good business with country banks and individuals in bonds below first grade?* Does the dealer reach the market among individuals and others in his territory for more speculative high-return preferred and common stocks? How alert is the dealer in obtaining his share of the business available in his territory?

The following summary shows the information entered on a typical syndicate record card to disclose the answers to these questions:

On a separate card for each dealer an entry is made of the dealer's record of past performance on issues offered to him. This card shows the date of the issue; the title of the issue; the amount of underwriting interest, if any, of the dealer; the type of offering, either firm or subscription; the amount offered to the dealer in the selling group; the amount accepted by the dealer; the amount of his additional sales, if any; his total sales of the issue on selling group terms; and the amount of open-market repurchases by the syndicate manager of securities sold to the dealer, divided into securities repurchased with penalty and without penalty.

The card described above is the basic record with respect to each dealer. All other information is entered on a second card, which contains:

1. The name of the dealer and the address to which communications are to be sent.
2. The name of the individual with whom business contacts are maintained on matters relating to syndicate operations.
3. A brief history of the dealer and a summary of information relating to his character and reputation.
4. A list of the cities in which the dealer maintains offices. This list gives the geographical scope of the dealer's activities.
5. The number of salesmen employed by the dealer. This figure gives some idea of the intensity and breadth of the dealer's operations.
6. A notation whether the dealer's territory is predominantly urban or rural.
7. Notations concerning the types of investors reached by the dealer—institutions, banks in the larger centers, country banks, individuals, etc.
8. A note on the securities, if any, in the distribution of which the dealer makes a specialty, such as municipal bonds, local utility preferred stocks, investment trusts, etc. This data frequently gives an especially accurate lead on the dealer's ability to reach certain markets in his territory.
9. An estimate of the capital resources of the dealer. Inasmuch as participants in selling groups have an opportunity to place their participations before deciding to accept or decline the offer, the capital resources of selling group members are not of major importance to the managing underwriter in deciding whether such dealers should be included in a selling group. Nevertheless, information concerning the capital resources of dealers is of interest to managing underwriters as an indication of the conservatism with which the dealer conducts his operations and as in some degree a measure of the success with which the dealer has conducted his business.
10. A notation (either 1, 2 or 3) which indicates the quantity of day to day trading business, using the size of the dealer as a base, in other than new issues, of each dealer with the underwriter concerned in the latter's capacity as a dealer. A small dealer who does the same volume of trading business with the underwriter concerned as a larger dealer, might be noted under (1) whereas the larger dealer would be noted under (2). These notations give a further indication of the ability of a dealer to meet the supply-demand conditions in his market.
11. A notation of the approximate minimum and average amounts which a dealer might be offered in a selling group. This notation is by no means rigidly adhered to when the participations of selling group members are worked out for a specific issue, but it is useful as a guide.

It will be noted that much of the information on the syndicate record cards is of a confidential nature and that the records are maintained solely for the information of the officers or partners of the underwriter concerned who are responsible for the formation of selling groups. In general, the record cards serve two purposes. These are, first, to provide a ready reference source from which to answer the questions most likely to arise in discussions, which are usually prolonged, preceding the formation of selling groups, and, second, to provide a basis by which dealers may be classified in an orderly manner to lighten the work of selecting selling group members best qualified to distribute a specific issue in the light of the type, size and quality of the issue and the market conditions prevailing at the time of offering.

All names in the typical syndicate list under discussion are divided into three classification groups (called the A, B and C groups) and the classification into which each dealer is placed is noted on the syndicate record card relating to the dealer. There has also been marked after the letter symbol of certain of the dealers, the note "Und.". This has been done to mark clearly dealers who are believed to have sufficient capital and distribution to warrant their inclusion in underwriting groups from time to time. The classifications are intended to convey a measure of the consistency of the distributing ability of each dealer with respect to various types of issue.

The A group includes those dealers who are believed to be consistently able to place amounts of any issue which meets a moderately receptive market. These are the dealers to whom the underwriter concerned is most likely to turn in forming a selling group. The larger dealers who frequently act as underwriters are almost without exception included in this group and any dealer who is believed to be actively in touch with all phases of the market in his territory is also included. Size is not necessarily a controlling criterion, although the average size of the dealers in the A group is probably considerably larger than the average size in the B and C groups. The A group, in fact, will be found to include several one-man firms who have been particularly successful in conducting business in their cities. Likewise, capital resources are not a controlling criterion, although the bottom limit on the capital resources of a dealer in the A group is probably in the neighborhood of \$10,000. Consistency of past performance is the major criterion in the classification of dealers. The amounts or the size of the dealer's expected distribution are a secondary consideration.

The B group includes dealers whose performance records are for one reason or another not as good as the records of the dealers in the A group. For example, a dealer whose customers are largely country banks might be expected to do a good job in selling a public utility bond issue yielding 4.50% but might not be able to sell any shares of a high grade preferred stock issue yielding 4.00%. He probably would be classed as a B dealer. Several old-line houses of the highest reputation, who decline all participations except those in issues rated "Aa" and "Aaa" by the statistical services, are also classed as B dealers. The B classification shows a less consistent performance record and dealers in this classification are generally offered participations in selling groups only after consideration has been given to the special qualifications of the dealer to handle each issue.

Even more consideration is given to the qualifications of dealers in the C group before they are offered participations in selling groups. These are dealers whose performance record is less satisfactory than the records of the B dealers. Many of the C dealers have not yet had an opportunity to demonstrate over a period of years their ability to contribute to the successful distribution of new issues. Many of these dealers are unseasoned in the business.

Changes in classification for dealers are made from time to time as conditions warrant, but the number of dealers in each of the three groups tends to remain fairly constant.

The A, B and C classifications are in no sense a measure of the financial probity of the dealers. The underwriter concerned is not likely to have any reason to doubt the financial or business integrity of any dealer on his syndicate list.

The typical syndicate list, the syndicate record cards and the classifications represent a condensation into written form of the judgments reached by those responsible for the operation of the syndicate department of the underwriter concerned relating to the qualifications of each dealer. The cards and classifications are nothing more than a ready reference system for use in discussions. Each selling group presents a different problem which must be met in the best

possible manner on the basis of the available information and in the light of the type, size and quality of the issue to be offered and the market conditions existing at the time.

FORMATION OF SELLING GROUPS

When a managing underwriter offers a group of dealers fixed participations (as distinguished from subscription participations) in a new issue, his hope is that each dealer receiving an offer will accept 100% of the offer. A certain portion of the bonds of each new issue will customarily be reserved for retail distribution by underwriters. The remainder will be offered through the selling group. In the aggregate, the amount of securities offered to underwriters and selling group dealers may be slightly in excess, but less than 110%, of the total amount of the issue with a view to minimizing the effect of non-acceptances from dealers who have received offerings. If dealers receiving offers of, say, 25% of the issue decline, the offering is not successful until underwriters and the remaining selling group members make additional sales to a point where the entire issue is placed.

Good syndication may be defined as selecting a high percentage of dealers who accept selling group participations up to the full amount of each offer.

Notwithstanding the use of great care in selecting selling group dealers for an issue which meets an unresponsive market, an issue is frequently destined to be unsuccessful because of market conditions. Likewise, careless selection of selling group members may not prove to be a handicap if an issue meets a nation-wide demand from many different types of investors. But in the majority of cases, careful selection of selling group members is an important and essential factor in the successful distribution of an issue.

In recent years, it is not probable that any managing underwriter has offered selling group participations in an issue of highest grade public utility bonds to be sold at a price to yield 3.00% to dealers whose business is restricted to the sale of open-end investment trusts to individual customers, since such individuals have not been in the market for bonds yielding 3.00%. Nor is it likely that a managing underwriter would include in the selling group for an issue of convertible preferred stock, dealers whose business transactions are solely with insurance companies and banks in one of the larger financial centers, since these institutions are not in the market for speculative securities.

The backbone of a syndicate list consists of those dealers in various parts of the United States who are keenly alert to the opportunities to do business in all types of securities; those who can find the demand for an issue if the demand exists in their territories. There is an intermediate group which can be counted upon to do good work in distribution of special types of issues and there is a third group which is not so alert and cannot be counted upon for consistent performance. Chief reliance is necessarily placed on the dealers included in the A group in a typical syndicate list.

It has previously been indicated that the basic factors which should govern the composition of a selling group are market conditions and the size, quality and type of issue. Some of the problems which may arise in this connection can be illustrated by a few examples.

An issue of \$10,000,000 of medium-grade industrial ten-year debentures, to be offered at a price to yield 4.00%, is expected to prove unattractive to insurance companies and individuals, but to be moderately attractive to national banks. The issue is small but the distribution problem is difficult. Under these circumstances, it is probable that the selection of selling group dealers would be restricted to the majority of dealers in the A group plus a selection of B and C dealers who had demonstrated an ability to handle similar pieces of business. As the list of dealers in this instance are fewer and selective, many of the dealers would receive relatively larger offerings.

An issue of \$10,000,000 of preferred stock of an industrial company, to be offered at a price to yield 4.50%, is expected to find its market primarily with individual investors interested in income, rather than price appreciation. The issue would probably be offered to a larger number of dealers and the participations offered each dealer might be considerably smaller than customary. While the proportion of non-acceptances might be quite high, the hope would be that several dealers on the A, B and C lists would find purchasers for larger amounts than had been offered to such dealers and that additional sales to these dealers, together with acceptances by other dealers, would be sufficient to result in sale of the entire issue. By scattering his shots, the manager succeeds in this case in finding an ultimate market for the preferred stock.

Geographical considerations are frequently of prime importance. An issue may be expected to be in great demand in the state in which the issuer is situated but is expected to lack appeal in other states. In this case, the selling group contains a relatively large number of dealers in the home state of the issuer. Sometimes too, tax refunds in Pennsylvania or legality for savings banks in certain states have an important bearing on the composition of a selling group.

In those few instances where no special problems exist in connection with the formation of selling groups, first consideration is given to the dealers who have had a good record of past performance on issues managed by the underwriter concerned.

It is frequently not possible to include certain dealers in selling groups who might logically expect to be included. Some of the larger underwriting houses never accept selling group participations in an issue of which they are not an underwriter for an amount less than a fixed minimum, say \$250,000 or \$100,000. When inclusion of such a dealer in the selling group with a participation acceptable to him would not be practical because of the size of the issue or because of the type of distribution desired, the managing underwriter usually omits such dealer.

The purpose of distribution through a nation-wide selling group is to obtain broad distribution, in small blocks, with a large number of ultimate investors. An issue is said to be well-placed if it is distributed in this manner. Distribution in large blocks is generally considered undesirable because a large block may upset the secondary market for the issue when the holder decides to sell. At times, however, it is virtually necessary to distribute issues in relatively large blocks because of the condition of the market.

In general, it may be said that the best way to obtain wide distribution with ultimate investors is to make offerings through a large number of dealers who maintain close contact with all types of investors in their territory.

EXHIBIT No. 2048

STIPULATION

It is hereby stipulated and agreed that the documents listed on the attached sheets are true copies of original communications or carbon copies in the files of Morgan Stanley & Co., Incorporated, and that they were received or sent, as the case may be, by Morgan Stanley & Co., Incorporated.

GEORGE A. BROWNELL,
(George A. Brownell)

Counsel to Morgan Stanley & Co., Incorporated.

1936

Telg. or Letter	To	From	Date
Letter.....	Morgan Stanley & Company.....	Harper Joy of Ferris & Hardgrove....	May 29, 1936
".....	Messrs. Ferris & Hardgrove. Att: Harper Joy, Esq.	John M. Young, Vice-Pres., of Morgan Stanley & Co., Incorporated.	June 3, 1936
".....	R. W. Dooly, Esq., of Bamberger and Company, Inc.	John M. Young, V. P.....	June 12, 1936
".....	Morgan Stanley & Company.....	R. W. Dooly, Esq., of Bamberger and Company, Inc.	June 5, 1936
".....	Mr. John M. Young.....	E. C. Wampler, Vice-Pres., Lawrence Stern and Company, Incorporated.	Oct. 21, 1936
".....	John M. Young, of Morgan Stanley & Company, Inc.	E. O. Dorbritz, of Moore, Leonard & Lynch.	Oct. 24, 1936
".....	E. O. Dorbritz, Esq., of Moore, Leonard & Lynch.	John M. Young, of Morgan Stanley & Co., Incorporated.	Oct. 26, 1936
".....	E. C. Wampler, Esq., of Lawrence Stern and Company, Incorporated.	John M. Young, of Morgan Stanley & Co., Incorporated.	Oct. 26, 1936
".....	John M. Young, of Morgan, Stanley and Company..	W. S. Gilbreath, Jr., of First of Michigan Corporation.	Nov. 5, 1936
".....	W. S. Gilbreath, Jr., Esq., V. P. First of Michigan Corporation.	John M. Young, V. P., of Morgan Stanley & Co., Incorporated.	Nov. 13, 1936
".....	Morgan Stanley & Co., Att: John M. Young.	E. A. Straw, of E. A. Straw, Inc.....	Dec. 4, 1936

1937

Telg. or Letter	To	From	Date
Letter.....	John M. Young, Morgan Stanley & Co.	George V. Rotan, of George V. Rotan Co.	Jan. 14, 1937
"	George V. Rotan, Esq.....	John M. Young, Morgan Stanley & Co.	Jan. 19, 1937
"	John M. Young, Morgan Stanley & Co.	George V. Rotan, of George V. Rotan Co.	Jan. 25, 1937
"	George V. Rotan, Esq., Messrs. George V. Rotan Co.	John M. Young, V. P., Morgan Stanley & Co., Incorporated.	Jan. 29, 1937
"	John Young, Morgan Stanley & Co.	Alfred R. Meyer, Hornblower & Weeks.	Feb. 1, 1937
"	Alfred R. Meyer, Esq.....	John M. Young, Morgan Stanley & Co.	Feb. 4, 1937

1938

Letter	Mr. John M. Young, of Morgan, Stanley & Company, Inc.	John C. Legg, Jr., of Mackubin, Legg & Company.	June 2, 1938
"	Perry E. Hall, of Morgan Stanley & Co., Inc.	T. B. Eastland, of Eastland & Co.....	June 6, 1938
"	William L. Day, of Morgan Stanley & Co., Inc.	Carey J. Chamberlin, of Townsend, Anthony and Tyson.	June 9, 1938
"	Sumner B. Emerson, Esq., V. P. of Morgan Stanley & Co., Incorporated.	Edgar Scott, of Montgomery, Scott & Co.	June 10, 1938
"	Edgar Scott, Esq., of Montgomery, Scott & Co.	Sumner B. Emerson, V. P. of Morgan Stanley & Co., Incorporated.	June 13, 1938
"	John Young, of Morgan Stanley & Co.	J. Lyle Osborne, of Schwabacher & Co.	June 21, 1938
"	Morgan Stanley and Co., Inc.....	C. S. Ashmun, of C. S. Ashmun Company.	July 7, 1938
"	Morgan Stanley & Co., Inc. Att: John M. Young, Esq.	L. B. E., of Woodward-Elwood & Co.	July 9, 1938
"	John Young, of Morgan Stanley & Co.	J. Lyle Osborne, of Schwabacher & Co.	July 14, 1938
"	John M. Young, of Morgan Stanley & Co., Inc.	Alfred R. Meyer, of Hornblower & Weeks.	July 15, 1938
(and Enc.)			

1939

Letter.....	Morgan Stanley & Co.....	Truman A. Surdam, of Surdam & Co.	July 13, 1939
"	Messrs. Surdam & Co. Att: T. A. Surdam, Esq.	W. L. D., Morgan Stanley & Co.....	July 14, 1939
"	Messrs. H. B. Cohle & Co.	Sumner B. Emerson, V. P., Morgan Stanley & Co., Inc.	July 18, 1939
Telegram.....	Morgan Stanley & Co., Inc.	H. B. Cohle & Co.....	July 18, 1939
Letter.....	Morgan Stanley & Company. Att: Mr. William L. Day.	Spencer, Swain & Co. By: Earle F. Spencer.	July 19, 1939
"	Morgan, Stanley & Co., Inc. Att: William L. Day, Esq.	F. L. Dabney & Co. (W. T. G.).....	July 19, 1939
"	Sumner B. Emerson, of Morgan Stanley & Company, Incorporated.	Philip H. Gerner, of George D. B. Bonbright & Co.	July 19, 1939
"	Sumner B. Emerson, of Morgan Stanley & Co., Inc.	Leland M. Bell, of Kerr & Bell.....	July 19, 1939
"	Morgan Stanley & Co., Incorporated.	Arthur H. Bosworth, of Bosworth, Chanute, Loughride & Company.	July 20, 1939
"	Perry Hall of Morgan, Stanley & Co., Inc.	C. H. Hyams, 3rd, of Hyams, Glas & Carothers.	July 21, 1939
"	Morgan, Stanley & Company, Inc. Att: Syndicate Department.	Jenkins, Whedbee & Poe per Gresham H. Poe.	July 21, 1939
"	Arthur P. Nauman, Esq., of Cray, McFawn & Petter.	Sumner B. Emerson, of Morgan Stanley & Co., Incorporated.	July 21, 1939
"	John M. Young, of Morgan Stanley & Co., Inc.	Rudolph Eichler, of Bateman, Eichler & Co.	July 22, 1939
"	Sumner B. Emerson, of Morgan Stanley & Company, Inc.	R. S. Dickson, of R. S. Dickson & Company.	July 26, 1939
"	Sumner B. Emerson, of Morgan Stanley & Co., Inc.	Harry Riter, of Riter & Co.....	July 27, 1939
(and Enc.)			
Letter.....	Morgan, Stanley & Co.....	John H. Lewis III, of Justus F. Lowe Company.	July 28, 1939
"	Rudolph Eichler, Esq., of Bateman, Eichler & Co.	Sumner B. Emerson, of Morgan Stanley & Co., Incorporated.	Aug. 1, 1939
"	Justus F. Lowe Company. Att: John H. Lewis III, Esq.	Sumner B. Emerson, of Morgan Stanley & Co., Incorporated.	Aug. 1, 1939
"	Harry G. Riter 3rd, Esq., of Riter & Co.	Sumner B. Emerson, of Morgan Stanley & Co., Incorporated.	Aug. 1, 1939

EXHIBIT No. 2049

[From the files of Morgan Stanley & Co. Incorporated]

11—Cincinnati, Ohio, 18

MORGAN STANLEY & CO., INC.,
2 Wall St., N. Y.

1939 July 18

Would like to receive offering and participation in Shell Union Syndicate.

H. B. COHLE & Co.

EXHIBIT No. 2050

[From the files of Morgan Stanley & Co. Incorporated]

JMY
WLD

MORGAN STANLEY & CO., INCORPORATED.

July 18, 1939.

Messrs. H. B. COHLE & Co.,

Union Trust Building, Cincinnati, Ohio.

GENTLEMEN: We acknowledge your telegram of July 18th requesting an offering of Shell Union Oil Debentures. While we are noting the interest of your firm, we do not know whether or not we shall find it possible to make your firm an offering.

Our files have no information with regard to your firm and its distributing ability. If you care to do so, we should be glad to have you tell us of the size of your firm, the type of business in which it specializes, the previous connections of its principals and any other information you may feel to be pertinent.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED,
SUMNER B. EMERSON, *Vice-President*.AIR MAIL
SBE:HH

EXHIBIT No. 2051

[From the files of Morgan Stanley & Co. Incorporated]

JMY
SBE

MORGAN STANLEY & CO., INCORPORATED

July 14, 1939.

Messrs. Surdam & Co.,

Mears Building, Scranton, Pa.

Attention—T. A. Surdam, Esq.

DEAR SIR: We wish to acknowledge your letter of July 13, 1939, in which you express an interest in the Shell Union Oil Corporation 2½% Debentures of 1954. We have noted your request but doubt that we shall be able to include you.

Our records contain very limited information about your firm. We should like to obtain from you any information you may care to present showing your distributing ability, territory served, etc.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED
By _____

WLD:JB

EXHIBIT No. 2052

[From the files of Morgan Stanley & Co. Incorporated]

MEMBERS

New York Stock Exchange
 Chicago Board of Trade
 New York Curb Exchange
 (Associate)

New York
 Los Angeles
 Oakland
 Fresno
 Santa Barbara
 Del Monte

SCHWABACHER & Co.

INVESTMENT SECURITIES

600 Market Street at Montgomery Telephone SUTter 5600

SAN FRANCISCO, July 14, 1938.

MR. JOHN YOUNG,
 MORGAN STANLEY & Co.,
 2 Wall Street, New York, N. Y.

DEAR MR. YOUNG: The writer would like to take this opportunity to express his appreciation on behalf of our firm for our recent inclusion in the new financing of Standard Oil Company of New Jersey.

In connection with our participation in new underwritings we make it a practice to apprise underwriters of the character of our distribution to the end that we may continue to justify their favors in further new issues.

In the Standard Oil Company of New Jersey 15-year debentures we participated to the extent of \$125,000 in the Selling Group. These bonds were distributed in our various offices in the following manner:

	No. of trans- actions	Par Value
Banks, insurance companies and other institutions.....	20	\$102,000
Individual customers.....	8	23,000
Total.....	28	\$125,000

In the serial note issue of the same company we participated to the extent of \$75,000 in the Selling Group. These bonds were distributed in our various offices in the following manner:

	No. of trans- actions	Par Value
Banks, insurance companies and other institutions.....	10	\$45,000
Individual customers.....	5	30,000
Total.....	15	\$75,000

Trusting this information will prove of value, we are,
 Very truly yours,

SCHWABACHER & Co.
 J. LYLE OSBORNE.

JLO G

"EXHIBIT No. 2053" appears in full in the text, p. 12683

EXHIBIT No. 2054-1

[From the files of Morgan Stanley & Co. Incorporated]

GEORGE V. ROTAN Co.

INVESTMENT SECURITIES

GEORGE V. ROTAN
LOVETT ABERCROMBIE

(Stamped:) Morgan Stanley & Co., Incorporated, Jan. 18 9:58 A. M., 1936

ESPERSON BUILDING, HOUSTON. *January 14, 1937.*MORGAN STANLEY & Co.,
#2 Wall Street, New York, N. Y.

(Attention: Mr. John M. Young.)

Re: Great Northern Railway, Gen. Mtg. 3s, 1967.

DEAR JOHN: We appreciate very much your offering us the 25M bonds today and regret exceedingly to have felt obligated to decline. Of course we are indebted to you for special consideration in many cases and we are ready to stay in there and pitch whenever there is any chance for us to do business. On the other hand as you undoubtedly recall we are poor on rails and our customers will not buy them except in special cases. In this particular instance I regret that I failed to notify you in advance that we would not be interested. We have been extremely busy and to be truthful I overlooked the issue entirely.

I sincerely hope that our standing with you is not impaired by declining an offering. I figure that we are not paid for any underwriting risk but are expected to do a selling job. If we make an honest effort to sell and do not succeed according to my understanding you would prefer to have us decline rather than to buy the bonds and throw them back in to the market later on.

An expression from you on the subject will be appreciated.

With best regards,

Very truly yours,

GEORGE V. ROTAN.

GVR: G

(Handwritten: Ans. J. M. Y. 1/19/37.)

EXHIBIT No. 2054-2

[From the files of Morgan Stanley & Co. Incorporated. Letter from J. M. Young to George V. Rotan]

MORGAN STANLEY & Co., INCORPORATED

January 19, 1937.

GEORGE V. ROTAN, Esq.,

*Messrs. George V. Rotan Co., Esperson Building,
Houston, Texas.*

DEAR GEORGE: I have received your letter of January 14, 1937, with reference to Great Northern Railway Company General Mortgage 3¾% Bonds. We were glad to have these Bonds back as we had substantial orders in other markets which we could not fill unless we were able to obtain unsold Bonds.

Railroad Bonds have demonstrated themselves to be the most difficult issues to distribute under present day circumstances. However, the Great Northern has made great progress in the past few years and this is a type of Bond that can be sold well if real effort is put on it.

You are correct in saying that you are not paid for an underwriting risk but are expected to do a selling job. While a single instance of this type will not affect your record with us, yet frankly I cannot understand why a Bond of this character would not be attractive to investors in your market.

Sincerely yours,

JMY: MA.

"EXHIBIT No. 2055" appears in full in the text, p. 12685

"EXHIBIT No. 2056" appears in full in the text, p. 12685

EXHIBIT No. 2057

[From the files of Morgan Stanley & Co. Incorporated]

MEMBER
Los Angeles Stock Exchange

Telephone Trinity 4081

KERR & BELL

629 South Spring Street, Los Angeles

JULY 19, 1939.

Mr. SUMNER B. EMERSON,
*Vice President, Morgan Stanley & Co., Inc.,
Two Wall Street, New York City.*

DEAR MR. EMERSON: After thoroughly canvassing our customers it was very disappointing to us to be unable to sell any of the Shell Union Oil 2½% Debentures which you offered us today at Selling Group terms.

As Mr. Kerr and I told you when you called to see us, it is not our policy to take bonds from any syndicate unless we are able to sell them to our legitimate customers. It has come to our attention that some of our competitors have taken down these particular bonds even though they have no prospects of selling them at the offering price, fearing that if they did not do so they would jeopardize their position with you as syndicate managers. We feel our policy is better for the syndicate rather than to take the bonds and immediately dump them in the so-called bootleg market at a loss to ourselves, or to have them on our shelves as an undistributed, unknown quantity to the syndicate managers. We think the syndicate managers should at all times know exactly where we stand.

Needless to say, if our efforts to date bring results, we shall wire you to see upon what basis you could supply the bonds.

We enjoyed your friendly visit with us and hope that when you are in Los Angeles again you will have more time to give us.

Very truly yours,

LELAND M. BELL,
KERR & BELL.Leland M. Bell.
ef.

EXHIBIT No. 2058

[From the files of Morgan Stanley & Co. Incorporated]

GEORGE D. B. BONERIGHT
WILLIAM W. HIBBARD
JOHN H. KITCHEN
RAYMOND J. BANTEL
HARTWELL P. MORSE
KENNETH C. TOWNSON
CHARLES C. LEE, *Exchange member*Rochester
Binghamton
New York City

GEORGE D. B. BONERIGHT & Co.

Members: New York Stock Exchange, Chicago Board of Trade

Associate members: New York Curb Exchange

100 Powers Building, Rochester, New York. Telephone Main 4830

(Handwritten:) PEH; Jr Y; WLD; File. Noted on card. No answer VEC.

JULY 19, 1939.

Mr. SUMNER B. EMERSON,
*Vice President, Morgan Stanley & Company, Incorp.,
2 Wall Street, New York, N. Y.*

DEAR SUMNER: I am sorry to say that we have done what appears to be a very poor job in the distribution of the new Shell Union bonds offered this morning. We actually had orders for 30M bonds, but of course, should have sold 3 or 4 times that many. We found that the chief objection to the bonds was not the quality, but the price. There was no question in my mind of the thoroughness of our job because we covered at least 50 banks and as many individuals in western New York and Pennsylvania.

A few of the banks that did buy the bonds placed their orders at least 10 days ago. I sincerely hope that you will not think we have fallen down on the job in the distribution of one of your deals for lack of real work on it, and that you will not hold this particular record against our future participation in other deals.

Kindest regards, I remain

Cordially yours,

PHILIP H. GERNER.

PHG/c

"EXHIBIT No. 2059" appears in full in the text, p. 12686

EXHIBIT No. 2060

[From the files of Morgan Stanley & Co. Incorporated]

(Handwritten :) Acknowledged. SoBell. Decl. 15. Shell, Decl. 15. Misc.

HYAMS, GLAS & CAROTHERS

INVESTMENT SECURITIES

610 Common Street, New Orleans, La.

JULY 21, 1939.

Mr. PERRY HALL,

% Morgan, Stanley & Co., Inc.,

2 Wall Street, New York, New York.

DEAR PERRY: I certainly feel badly about not being able to sell any of the Shell Union or the Southern Bell Telephone issues. However, people down here simply don't seem to buy those securities. I am sure we could have used some of the Southern Bells if the premium had not been so great, but as it happens, the very day those came out we bought an issue of State of Louisiana Pension 2.30's, 2.50's and 3.00's due in 12 years and reoffered the 3.00's on a 2.65 basis. The issue is one of the very best in the State and still nobody thought that the issue was offered at a bargain price.

I certainly hope that some day this market will catch up to yours so that we can participate in national syndicates the way we did several years ago, but this does not seem to be feasible right at the present. Meanwhile, I am delighted that you won your point in that particular issue in regard to competitive bidding and hope that this present agitation for it will die down.

I have written to Mr. Ripley to ask for a copy of the pamphlet that Harriman, Ripley is issuing on the subject and shall bring it with me to the next Times-Picayune meeting.

With best regards and hoping to see you in California this Fall, I am

Yours sincerely,

CHAPPY,

C. H. HYAMS, 3rd.

CHH3rd : MM

EXHIBIT No. 2061

[From the files of Morgan Stanley & Co. Incorporated]

(Initialed :) W. L. D.

[Letterhead of]

BOSWORTH, CHANUTE, LOUGHRIDGE & COMPANY

INVESTMENT BANKERS

DENVER, COLORADO, July 20, 1939:

Corner 17th and California Streets

Air Mail

MORGAN STANLEY & CO., INCORPORATED,

2 Wall Street, New York, N. Y.

GENTLEMEN: Please find herewith enclosed signed acceptance of the Selling Group letter on both the SHELL UNION OIL CORPORATION Debentures and the SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY Debentures.

We very much appreciate your kindness in including us in these two selling groups.

In view of the fact that we only accepted \$50,000 SHELL UNION OIL CORPORATION Debentures, as compared to the \$85,000 Debentures which you held for us, we would like to explain that we made every possible effort to use these debentures. We canvassed our private investors, the Colorado banks, and other institutions. As a matter of fact, we had very poor success and our efforts resulted in selling only \$15,000 debentures. One bank in Colorado Springs, which on the previous day had indicated that they would be interested and to whom we expected to sell either \$15,000 or \$25,000 debentures, told us early yesterday that they had bought bonds in Chicago at 97. They asked us not to cause any trouble over the matter but they were explaining to us why they did not place the order here. The official of the bank stated he realized that somebody was breaking the selling group agreement but he thought he was justified in taking advantage of the price. We were unable to learn the name of the firm from whom he made the purchase but we inferred that it was one of the trading houses there. You may be interested in hearing that our salesmen have reported to me that two local dealers had told them that they had purchased debentures at list less 1%. I think we might have had better success if it had not been for this price situation.

We infer that there were special reasons in relation to both issues why the debentures had to be priced at what appears to the investor as a pretty high price, and we appreciate the fact that your firm has been the champion for the entire investment banking business. We certainly shall continue to put forth our best efforts on both issues.

Sincerely yours,

ARTHUR H. BOSWORTH, *Pres.*

Encs.

AHB ELK

EXHIBIT No. 2062

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Securities Offered for Cash¹ by Type of Offering, January 1934- June 1939

[Estimated Gross Proceeds in Thousands of Dollars]

Year	Total	Registered Issues		Unregistered Issues			
		Publicly Offered	Privately Offered	Exempt Issues ² Publicly Offered	Privately Offered		Intrastate & Unascertained Offerings
					Exempt ³	Other	
1934	\$5,022,426	\$120,810	\$9,833	\$4,795,661	\$1,206	\$89,900	\$5,016
1935	6,915,501	1,852,312	68,321	4,581,544	80,898	295,876	6,550
1936	10,184,229	3,442,493	129,636	6,221,030	85,888	291,768	13,414
1937	5,380,428	1,783,136	8,666	3,133,633	110,423	331,929	12,741
1938	5,956,778	1,446,250	63,288	3,755,865	30,046	655,839	5,480
1st Half 1939	2,666,935	647,457	4,124	1,661,478	44,073	306,700	3,103
Total	36,126,297	9,322,458	283,868	24,149,111	352,534	1,972,012	46,314

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

¹ Reported as offered in the financial press or in records of the Commission. Data exclude issues having maturities of less than one year; issues with gross proceeds of \$100,000 or less; offerings which do not appear in the financial press (largely those sold through continuous offering, such as sales of securities of open-end investment companies); and intra-corporate transactions. Figures subject to revision as new data are received.

² Includes offerings by the United States Government and agencies, and by United States Insular and territorial possessions; by states, municipalities, and other governmental subdivisions; by common carriers; by banks; and by charitable, religious, educational, and other non-profit institutions.

³ Exempt unregistered private issues are those which in the event of a public offering would not have been required to be registered under the Securities Act of 1933. These data are believed to be incomplete, as no exhaustive search for issues of that type (which are outside the jurisdiction of the Securities and Exchange Commission) was made.

EXHIBIT No. 2063

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Securities Offered for Cash¹ by Type of Security, January 1934--June 1939

[Estimated Gross Proceeds In Thousands of Dollars]

Year	Total	Bonds, Notes, and Debentures	Preferred Stock	Common Stock
1934	\$5,022,426	\$4,995,477	\$7,224	\$19,725
1935	6,915,501	6,808,531	85,423	21,547
1936	10,184,229	9,637,077	269,775	277,377
1937	5,380,428	4,694,781	402,019	283,628
1938	5,950,778	5,846,802	85,600	24,376
1st Half 1939	2,666,935	2,553,219	56,391	57,325
Total	36,126,297	34,535,887	906,432	683,978

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

¹ Reported as offered in the financial press or in records of the Commission. Data exclude issues having maturities of less than one year; issues with gross proceeds of \$100,000 or less; offerings which do not appear in the financial press (largely those sold through continuous offering, such as sales of securities of open-end investment companies); and intra-corporate transactions. Figures subject to revision as new data are received.

EXHIBIT No. 2064

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Amount and Percent of Registered Bond and Preferred Stock and Common Stock Issues Managed by Selected Investment Banking Firms,¹ January 1934--June 1939

[Amounts in Thousands of Dollars]

	Bonds		Preferred Stock		Common Stock		All Issues	
	Amount	Per-cent	Amount	Per-cent	Amount	Per-cent	Amount	Per-cent
Morgan Stanley & Co. Inc. ²	\$2,014,716	25.9	\$88,280	9.2	\$38,699	8.0	\$2,141,695	23.2
The First Boston Corporation	937,090	12.0	49,139	5.1			986,229	10.7
Kuhn, Loeb & Co.	595,833	7.7	1,671	0.2	20,497	4.3	618,001	6.7
Dillon Read & Co.	572,500	7.4	99,171	10.3	7,969	1.7	679,640	7.4
Smith Barney & Co. ³	353,892	4.5	94,040	9.8	24,160	5.0	472,092	5.1
Blyth & Co., Corporation	337,378	4.3	38,253	4.0	13,112	2.7	388,743	4.2
Total: 6 New York City Firms	4,811,409	61.8	370,554	38.6	104,437	21.7	5,286,400	57.3
14 Other New York City Firms ⁴	1,557,000	20.0	279,450	29.1	133,860	27.7	1,970,310	21.3
Total: 20 New York City Firms	6,368,409	81.8	650,004	67.7	238,297	49.4	7,256,710	78.6
18 Firms Outside New York City ⁵	1,000,132	12.8	50,719	5.3	63,379	13.1	1,114,430	12.1
Total: 38 Firms	7,368,541	94.6	700,723	73.0	301,676	62.5	8,371,140	90.7
All Other Firms	421,189	5.4	259,872	27.0	181,233	37.5	862,094	9.3
All Firms	7,789,730	100.0	960,595	100.0	482,909	100.0	9,233,234	100.0

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

¹ The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report to the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.² From date of organization, September 16, 1935.³ Data are for Edward B. Smith & Co. prior to the merger with Charles D. Barney & Co., December 1937, and for the new firm thereafter.⁴ These fourteen firms are: Bonbright & Co., Inc.; Harriman Ripley & Co., Inc. (Brown Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January 1939); Lazard Freres & Co.; Stone & Webster and Budget, Inc.; Hayden Stone & Co.; Lehman Brothers; Glorie, Forgan & Co. (formerly Field, Glorie & Co., name changed to Glorie, Forgan & Co., January, 1937); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Rollins & Sons, Inc.⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall & Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co. Incorporated; F. S. Moseley & Co.; Hayden, Miller and Company; Jackson & Curtis; F. W. Clark & Co.; Lawrence Stern and Company, Inc., (succeeded by Stern, Wampler & Co., Inc., in May 1938).

EXHIBIT No. 2065

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Distribution Among Bonds and Preferred Stock and Common Stock in Registered Issues Managed by Selected Investment Banking Firms,¹ January 1934-June 1939

[Amounts in Thousands of Dollars]

	Bonds		Preferred Stock		Common Stock		Total: All Issues	
	Amount	Per-cent	Amount	Per-cent	Amount	Per-cent	Amount	Per-cent
Morgan Stanley & Co., Inc. ²	\$2, 014, 716	94.1	\$88, 280	4.1	\$38, 699	1.8	\$2, 141, 695	100.0
The First Boston Corp.....	937, 090	95.0	49, 139	5.0	-----	-----	986, 229	100.0
Kuhn, Loeb & Co.....	595, 833	96.4	1, 671	0.3	20, 497	3.3	618, 001	100.0
Dillon Read & Co.....	572, 500	84.2	99, 171	14.6	7, 969	1.2	679, 640	100.0
Smith Barney & Co. ³	353, 892	75.0	94, 040	19.9	24, 160	5.1	472, 092	100.0
Blyth & Co., Inc.....	337, 378	86.8	38, 253	9.8	15, 112	3.4	388, 743	100.0
Total: 6 New York City Firms.....	4, 811, 409	91.0	370, 554	7.0	104, 437	2.0	5, 286, 400	100.0
14 Other New York City Firms ⁴	1, 557, 000	79.0	279, 450	14.2	133, 860	6.8	1, 970, 310	100.0
Total: 20 New York City Firms.....	6, 368, 409	87.7	650, 004	9.0	238, 297	3.3	7, 256, 710	100.0
18 Firms Outside New York City ⁵	1, 000, 132	89.7	50, 719	4.6	63, 379	5.7	1, 114, 430	100.0
Total: 38 Firms.....	7, 368, 541	88.0	700, 723	8.4	301, 676	3.6	8, 371, 140	100.0
All Other Firms.....	421, 189	48.9	259, 872	30.1	181, 233	21.0	862, 094	100.0
All Firms.....	7, 789, 730	84.4	960, 595	10.4	482, 909	5.2	9, 233, 234	100.0

¹ The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report to the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.

² From date of organization, September 13, 1935.

³ Data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co., December, 1937, and for the new firm thereafter.

⁴ These fourteen firms are: Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brown Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January, 1939.); Lazard Freres; Stone & Webster and Blodget, Inc.; Hayden Stone & Co.; Lehman Brothers; Glore, Forgan & Co. (Formerly Field, Glore & Co., name changed to Glore, Forgan & Co., January, 1937.); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation E. H. Rollins & Sons, Inc.

⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Moseley & Company; Hayden Miller and Company; Jackson & Curtis; F. W. Clark & Co.; Lawrence Stern and Company, Inc., (succeeded by Stern, Wampler & Co., Inc., in May, 1938).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2066

[Chart based on following statistical data appears in text on p. 12994.]

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Quality of Bond Issues¹ Managed by 38 Investment Banking Firms,² All Industries, January 1934-June 1939

[Amounts in thousands of dollars]

	First Grade.		Second Grade		Third Grade		Fourth Grade		Below Fourth Grade		All Grades	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Morgan, Stanley & Co., Inc.	\$859,780	65.0	\$734,685	31.4	\$206,451	11.3	\$169,856	10.9	\$43,964	14.6	\$2,014,716	27.3
The First Boston Corp.	213,000	16.1	331,990	16.3	277,109	11.8	123,625	7.9	1,375	0.5	937,000	12.7
Kuhn, Loeb & Co.	55,000	4.2	324,500	13.8	138,533	15.2	288,250	18.4	27,750	9.2	595,833	8.1
Dillon, Read & Co.	9,765	0.7	63,794	2.7	138,750	7.3	50,250	3.2	9,000	3.0	572,500	7.8
Smith, Barney & Co. ³			210,000	9.0	156,583	8.4	78,000	5.0	47,750	15.8	333,842	4.6
Blyth & Co., Inc.					12,553	0.7	93,325	6.0	20,000	6.6	333,875	4.6
Total, 6 New York City Firms.	1,137,545	86.0	1,714,949	73.2	1,064,270	54.7	803,306	51.4	149,839	49.7	4,902,909	65.3
14 Other New York City Firms ⁴	185,595	14.0	317,451	13.5	487,209	26.5	478,491	30.6	85,254	28.6	1,555,000	21.1
Total, 20 New York City Firms.	1,323,140	100.0	2,032,400	86.7	1,491,479	81.2	1,281,797	82.0	235,093	78.3	6,357,909	86.4
18 Firms Outside New York City ⁵		0.0	311,232	13.3	344,500	18.8	281,900	18.0	65,500	21.7	1,002,832	13.6
Total.	1,323,140	100.0	2,343,632	100.0	1,835,979	100.0	1,563,397	100.0	301,593	100.0	7,367,741	100.0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² This table deals with the total amount of bond issues managed during the period January 1, 1934, to June 30, 1939. The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report of the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.

³ Data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co., December, 1937, and for the new firm thereafter.

⁴ These fourteen firms are: Bonbright & Co., Inc. (Brown Hartman & Co., Inc. changed to Hartman, Ripley & Co., Inc., January 1939); Lazard Freres; Stone & Webster and Blodgett, Inc.; Hayden, Stone & Co.; Lehman Brothers; Glore, Morgan & Co. (formerly Field, Glore & Co., name changed to Glore, Morgan & Co., January, 1937); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Rollins & Sons Inc.

⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Eastbrook & Co.; A. C. Allen and Company, Inc.; Cassatt & Co., Inc.; F. S. Mosley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Lawrence Stern and Company, Inc. (succeeded by Stern, Wampler & Co., Inc., in May, 1938).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2067

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Amount and Percent of Registered Bond Issues of Each Quality Grade ¹ Managed by Morgan Stanley & Co., Inc., From Organization ² to June 30, 1939[Amounts in thousands of dollars; percentages of total amount managed by 38 leading firms] ³

	First Grade			Second Grade			Third Grade		
	Amount	Percentages of Amount Managed from		Amount	Percentages of Amount Managed from		Amount	Percentages of Amount Managed from	
		1-1-34	9-16-35		1-1-34	9-16-35		1-1-34	9-16-35
Manufacturing Companies.....	\$111,000	68.9	100.0				\$112,000	15.7	19.7
Electric-Light and Power, Gas and Water Companies.....	409,680	52.0	70.5	\$291,915	18.5	21.9	69,451	7.6	7.9
Transportation and Communication Companies.....	239,100	100.0	100.0	317,750	93.3	97.8	250,000	12.8	17.2
Companies other than Manufacturing and Public Utility.....	100,000	74.1	74.1	125,000	43.0	61.9			
All Industries.....	\$59,780	65.0	80.6	734,665	31.4	36.8	206,451	11.3	12.9
	Fourth Grade			Below Fourth Grade			All Grades		
	Amount	Percentages of Amount Managed from		Amount	Percentages of Amount Managed from		Amount	Percentages of Amount Managed from	
		1-1-34	9-16-35		1-1-34	9-16-35		1-1-34	9-16-35
Manufacturing Companies.....	\$41,356	5.6	6.4				\$264,356	13.6	17.3
Electric-Light and Power, Gas and Water Companies.....				\$43,964	42.2	42.2	\$15,010	21.7	25.1
Transportation and Communication Companies.....	123,500	49.6	55.6				556,850	71.1	72.8
Companies other than Manufacturing and Public Utility.....	169,856	10.9	12.1	43,964	14.6	19.4	378,500	42.4	51.2
All Industries.....							2,014,716	27.3	32.1

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² September 16, 1937.
³ This section of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets," a report to the Securities and Exchange Commission by its Research and Statistics Section, August 1939. These 38 firms included twenty firms within New York City and eighteen firms outside of New York City.

The twenty firms within New York City are: Morgan, Stanley & Co.; The First Boston Corp.; Kuhn Loeb & Co.; Dillon Read & Co.; Smith Barney & Co. (data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co., December 1937, and for the new firm thereafter); Blyth & Co., Inc.; Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brown, Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January 1939); Lazard Freres; Stone & Webster and Blodgett, Inc.; Haydon, Stone & Co.; Lehman Brothers; Glens Forgan & Co., (formerly Field, Glens & Co.; name changed to Glens, Forgan & Co. January 1937); Lee Higginson Corporation; E. H. Rollins & Sons, Inc.; Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kinder, Peabody & Co.

The sixteen firms outside New York City are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coflin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Palne, Webster Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Moseley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Stern, Wampler & Co. (successor to Lawrence Stern and Co., Inc. May 1938).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2068

(Chart based on following statistical data appears in text on p. 12697)

[Prepared by the staff of Investment Banking Section, Securities & Exchange Commission]

Quality of bond issues¹ managed by 38 investment banking firms²—Manufacturing companies, January 1934–June 1939

Amounts in thousands of dollars

	First Grade		Second Grade		Third Grade		Fourth Grade		Below Fourth Grade		All Grades	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Morgan Stanley & Co., Inc.	\$111,000	68.9			\$112,000	15.7	\$41,356	5.0			\$264,356	13.6
The First Boston Corp.					23,400	3.5	14,500	2.0			30,900	2.0
Kuhn Loeb & Co.					223,333	31.2	209,000	30.0	\$27,750	16.7	520,083	26.8
Millin Read & Co.			\$100,000	65.8	23,300	3.3	30,000	4.0	9,000	5.7	122,500	6.4
Smith Barney & Co. ³			5,000	3.3	127,333	17.8	60,000	8.0	47,750	28.7	249,083	12.4
Blyth & Co., Inc.								8.8	16,200	9.7	82,025	4.2
Total: 6 New York City Firms	111,000	68.9	105,000	69.1	511,166	71.5	480,681	64.4	100,700	60.5	1,308,547	67.4
14 Other New York City Firms	59,000	31.1	147,000	30.9	148,545	20.7	198,772	26.6	24,954	15.0	469,271	24.2
Total: 20 New York City Firms	161,000	100.0	152,000	100.0	659,711	92.2	679,453	91.0	125,654	75.5	1,777,818	91.6
18 Firms Outside New York City					55,533	7.8	67,500	9.0	40,750	24.5	163,783	8.4
Total	161,000	100.0	152,000	100.0	715,244	100.0	746,953	100.0	166,404	100.0	1,941,601	100.0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.² This table deals with the total amount of bond issues managed during the period January 1, 1934, to June 30, 1939. The selection of the leading 38 firms was based upon the total amount of all writing participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets," Report of the Securities and Exchange Commission by its Research and Statistics Division, August, 1939, hereinafter.³ These are for E. B. Smith & Co. prior to the merger with Charles D. Barry & Co., December, 1937, and for the new firm thereafter.⁴ These firms are: Bonding & Co., Inc.; Harriman, Ripley & Co., Inc.; (Harriman & Co., Inc. changed to Harriman, Ripley & Co., Inc. January, 1939); Lazard Freres, Stone & Webster and Bonding & Co., Inc.; Haydon, Stone & Co.; Goldman Brothers, Gluck & Co. (formerly Field, Gluck & Co., name changed to Gluck, Foran & Co., Inc. January, 1937); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Rollins & Sons, Inc.⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Bylesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Mesley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Lawrence Stern and Company, Inc. (succeeded by Stern, Wampler & Co., Inc., in May, 1933).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2069

(Chart based on following statistical data appears in text on p. 12699)

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Quality of Bond Issues¹ Managed by 38 Investment Banking Firms²—Electric Light and Power, Gas and Water Companies, January 1934—June 1939

[Amounts in Thousands of Dollars]

	First Grade		Second Grade		Third Grade		Fourth Grade		Below Fourth Grade		All Grades	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Morgan Stanley & Co., Inc.	\$409,680	52.0	\$291,915	18.5	\$69,451	7.6	---	---	\$43,984	42.2	\$815,010	21.7
The First Boston Corp.	195,500	24.8	290,980	18.4	192,100	21.1	\$71,625	19.6	1,375	1.3	751,500	20.0
Kuhn Loeb & Co.	---	---	---	---	---	---	---	---	---	---	---	---
Dillon Read & Co.	55,000	7.0	189,500	12.0	110,250	12.1	5,250	1.4	---	---	360,000	9.6
Smith Barney & Co. ³	9,765	1.2	58,794	3.7	18,000	2.0	---	---	---	---	86,559	2.3
Blyth & Co., Inc.	---	---	210,000	13.3	10,593	1.1	9,700	2.7	---	---	230,293	6.2
Total: 6 New York City Firms.	609,945	85.0	1,041,199	65.9	400,394	43.9	56,575	23.7	45,339	43.5	2,243,452	59.8
14 Other New York City Firms ⁴	118,095	15.0	233,951	14.8	255,764	28.1	123,205	34.2	35,700	34.2	768,710	20.5
Total: 20 New York City Firms	788,040	100.0	1,275,150	80.7	656,158	72.0	211,775	57.9	81,039	77.7	3,012,162	80.3
18 Firms Outside New York City ⁵	---	---	305,232	19.3	255,517	28.0	154,100	42.1	23,250	22.3	738,099	19.7
Total: 38 Firms.	788,040	100.0	1,580,382	100.0	911,675	100.0	365,875	100.0	104,289	100.0	3,750,261	100.0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² This table deals with the total amount of bond issues managed during the period January 1, 1934, to June 30, 1939. The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report to the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.

³ Data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co., December, 1937, and for the new firm thereafter.

⁴ These fourteen firms are: Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brown Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January, 1939); Lazard Freres; Stone & Webster; Blodgett, Inc.; Hayden, Stone & Co.; Lehman Brothers; Glorie, Forgan & Co. (formerly Field, Glorie & Co., name changed to Glorie, Forgan & Co., January, 1937.); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Rollins & Sons, Inc.

⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Faine, Webster & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Eschbarr & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Mosley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Lawrence Stern and Company, Inc., (succeeded by Stern, Wampler & Co., Inc., in May, 1935).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2070

(Chart based on following statistical data appears in text on p. 12701)

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Quality of Bond Issues¹ Managed by 38 Investment Banking Firms²—Transportation and Communication Companies, January 1934–June 1939

[Amounts in Thousands of Dollars]

	First Grade		Second Grade		Third Grade		Fourth Grade		Below Fourth Grade		All Grades	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Morgan Stanley & Co., Inc.	\$239, 100	100. 0	\$317, 750	95. 3							\$556, 850	71. 1
The First Boston Corp.											19, 250	2. 5
Kuhn Loeb & Co.												
Dillon Read & Co.												
Smith Barney & Co. ³												
Blyth & Co., Inc.					\$1, 960	14. 2	12, 800	6. 7	\$3, 800	71. 7	18, 560	2. 4
Total: 6 New York City Firms	239, 100	100. 0	317, 750	95. 3	1, 960	14. 2	32, 050	16. 7	3, 800	71. 7	594, 660	76. 0
14 Other New York City Firms ⁴			15, 500	4. 7	5, 400	39. 1	144, 519	75. 4			165, 419	21. 1
Total: 20 New York City Firms	239, 100	100. 0	333, 250	100. 0	7, 360	53. 3	176, 569	92. 1	3, 800	71. 7	760, 079	97. 1
18 Firms Outside New York City ⁵					6, 450	46. 7	15, 000	7. 9	1, 500	28. 3	22, 950	2. 9
Total: 38 Firms	239, 100	100. 0	333, 250	100. 0	13, 810	100. 0	191, 569	100. 0	5, 300	100. 0	783, 029	100. 0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² This table deals with the total amount of bond issues managed during the period January 1, 1934, to June 30, 1939. The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets," a report to the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.

³ Data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co., December, 1937, and for the new firm thereafter.

⁴ These fourteen firms are: Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brow); Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January, 1939; Lazard Freres; Stone & Webster and Blodgett, Inc.; Hayden, Stone & Co.; Lehman Brothers; Glore, Forgan & Co. (Formerly Field, Glore & Co., name changed to Glore, Forgan & Co., January, 1937); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Rollins & Sons, Inc.

⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Curtis; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Moseley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Lawrence Stern and Company, Inc. (succeeded by Stern, Wampler & Co., Inc., in May, 1938).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2071

(Chart based on following statistical data appears in text on p.12703.)

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Quality of Bond Issues¹ Managed by 38 Investment Banking Firms²—Companies Other Than Manufacturing or Public Utility, January 1934—June 1939

[Amounts in thousands of dollars]

	First Grade		Second Grade		Third Grade		Fourth Grade		Below Fourth Grade		All Grades	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Morgan Stanley & Co., Inc.	\$100,000	74.1	\$125,000	45.0	\$25,000	12.8	\$128,500	49.6	—	—	\$378,500	42.4
The First Boston Corp.	17,500	12.9	91,000	32.7	—	—	37,500	14.5	—	—	146,000	16.4
Kuhn Loeb & Co.	—	—	—	—	56,500	20.0	—	—	—	—	56,500	6.4
Dillon Read & Co.	—	—	35,800	12.6	—	—	15,000	5.8	—	—	50,000	5.6
Smith Barney & Co. ³	—	—	—	—	9,250	4.7	18,000	6.9	—	—	27,250	3.0
Blyth & Co., Inc.	—	—	—	—	—	—	5,000	1.9	—	—	5,000	0.6
Total: 6 New York City Firms	117,500	87.0	231,000	90.3	90,750	46.5	204,000	78.7	—	—	632,250	74.3
14 Other New York City Firms ⁴	17,500	13.0	21,000	7.5	77,500	39.7	10,000	3.9	\$25,600	100.0	151,600	17.0
Total: 20 New York City Firms	135,000	100.0	272,000	97.8	168,250	86.2	214,000	82.6	25,600	100.0	814,850	91.3
18 Firms Outside New York City ⁵	—	—	6,000	2.2	27,000	13.8	45,000	17.4	—	—	78,000	8.7
Total: 38 Firms	135,000	100.0	278,000	100.0	195,250	100.0	259,000	100.0	25,600	100.0	892,850	100.0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² This table deals with the total amount of bond issues managed during the period January 1, 1934, to June 30, 1939. The selection of the leading 38 firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934, to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report to the Securities and Exchange Commission by its Research and Statistics Section, August, 1939.

³ Data are for E. B. Smith & Co. prior to the merger with Charles E. Barney & Co., December, 1937, and for the new firm thereafter.

⁴ These fourteen firms are: Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brown Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc., January, 1939); Lazard Freres, Stone & Webster and Bioulet, Inc.; Hayden, Stone & Co.; Leuman Brothers; Glore, Forgan & Co. (Formerly Field, Glore & Co., name changed to Glore, Forgan & Co., January, 1937); Goldman, Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee Higginson Corporation; E. H. Robbins & Sons, Inc.

⁵ These firms are: Halsey Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Bylesky and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Mosley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Lawrence Stern and Company, Inc. (succeeded by Stern, Wampler & Co., Inc. in May, 1938).

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2072

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Distribution by grades ¹ of Registered Bond Issues Managed by Morgan Stanley & Co. and Thirty-Seven other Leading Investment Banking Firms ² September 16, 1935-June 30, 1939

[Amounts in Thousands of Dollars]

	Morgan Stanley & Co. Inc.		5 other Leading New York City Firms ³		14 other New York City Firms ⁴		18 Firms Outside New York City ⁵		37 Leading Firms ⁶	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
First Grade-----	\$859,780	42.7	\$89,500	4.4	\$117,001	9.1	\$288,082	30.8	\$206,501	4.9
Second Grade-----	734,665	36.5	756,534	37.2	186,951	14.5	311,500	33.3	1,231,667	28.9
Third Grade-----	206,451	10.2	603,225	29.7	482,616	37.4	276,600	29.6	1,238,931	32.8
Fourth Grade-----	169,856	8.4	546,150	26.9	416,241	32.3	59,500	6.3	1,182,129	29.1
Below Fourth Grade-----	43,964	2.2	36,375	1.8	86,254	6.7				4.3
Total: All Grades-----	\$2,014,716	100.0	\$2,031,784	100.0	\$1,289,063	100.0	\$935,082	100.0	\$4,256,529	100.0

¹ Quality ratings were taken from the reports of the rating agencies. The ratings designated as first, second, and third grade correspond to the three "A" grades generally used; the fourth grade corresponds to the highest "B" grade.

² This table deals with the total amount of registered bond issues managed during the period September 16, 1935 to June 30, 1939. The selection of the 37 other leading firms was based upon the total amount of underwriting participations in registered issues during the period January 1, 1934 to June 30, 1938, as presented in Table 31 of "Selected Statistics on Securities and Exchange Markets", a report to the Securities and Exchange Commission by its Research and Statistics Section, August 1939.

³ These firms are: The First Boston Corporation; Kuhn, Loeb & Co.; Dillon Read & Co.; Smith Barney & Co. (data are for E. B. Smith & Co. prior to the merger with Charles D. Barney & Co. December, 1937, and for the new firm thereafter); Blyth & Co., Inc.

⁴ These firms are: Bonbright & Co., Inc.; Harriman, Ripley & Co., Inc. (Brown Harriman & Co., Inc. changed to Harriman Ripley & Co., Inc. January 1939); Leazard Freres; Stone & Webster and Blollet, Inc.; Hayden, Stone & Co.; Lehman Brothers; Glore, Forgan & Co. (Formerly Field, Glore & Co.; name changed to Glore, Forgan & Co. January 1937); Goldman Sachs & Co.; Salomon Bros. & Hutzler; W. C. Langley & Co.; White, Weld & Co.; Kidder, Peabody & Co.; Lee, Higginson Corporation; E. H. Kohns & Sons, Inc.

⁵ These firms are: Halsey, Stuart & Co., Inc.; Mellon Securities Corporation; Coffin & Burr, Inc.; Harris, Hall and Company; Otis & Co.; Paine, Webber & Co.; A. G. Becker & Co.; H. M. Byllesby and Company; Dean Witter & Co.; Central Republic Company; Estabrook & Co.; A. C. Allyn and Company, Inc.; Cassatt & Co., Inc.; F. S. Moseley & Company; Hayden Miller and Company; Jackson & Curtis; E. W. Clark & Co.; Stern, Wampler & Co. (Successor to Lawrence Stern and Co., Inc., May, 1938).

⁶ Not including Morgan Stanley & Co., Inc.

Source: Data on file with the Research and Statistics Section, Trading and Exchange Division, Securities and Exchange Commission.

EXHIBIT No. 2073

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Amount and Percent of Participations of Selected Investment Banking Firms in Issues Managed or Co-Managed by Those Firms, June 14, 1934-June 30, 1939

[Amounts in thousands of dollars]

PART I—MORGAN STANLEY & CO. INC.

	Morgan Stanley & Co., Inc. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Morgan Stanley & Co., Inc.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	522,991	88.7	522,991	21.7
Kuhn, Loeb & Co.	26,750	4.5	155,943	6.5
The First Boston Corporation			139,615	5.8
Blyth & Co., Inc.	10,000	1.7	99,711	4.1
Dillon Read & Co.	7,500	1.3	61,101	2.5
Mellon Securities Corp.	4,500	0.8	81,605	3.4
Harriman, Ripley & Co., Inc.	9,000	1.5	165,157	6.8
Smith, Barney & Co.	4,750	0.8	182,489	7.6
Total: Morgan Stanley & Co. Incorporated Participations in Originations of Eight Houses	585,491	99.3		
Total: Morgan Stanley & Co. Incorporated Participations in Originations of All Houses	589,516	100.0		
Total: Participations by Eight Houses in Morgan Stanley & Co. Incorporated Originations			1,408,612	58.4
Total: All Issues Managed or Co-Managed by Morgan Stanley & Co. Incorporated			2,413,646	100.0

PART II—KUHN, LOEB & CO.

	Kuhn, Loeb & Co. Participations in Issues managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Kuhn, Loeb & Co.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	155,943	22.0	26,750	2.5
Kuhn, Loeb & Co.	419,654	59.2	419,654	39.8
The First Boston Corporation	7,217	1.0	61,523	5.8
Blyth & Co. Inc.	12,100	1.7	25,851	2.5
Dillon Read & Co.	23,250	3.3	7,300	0.7
Mellon Securities Corp.	6,938	1.0	14,323	1.4
Harriman, Ripley & Co. Inc.	20,401	2.9	103,058	9.8
Smith, Barney & Co.	20,435	2.9	36,453	3.4
Total: Kuhn, Loeb & Co. Participations in Originations of Eight Houses	665,604	94.0		
Total: Kuhn, Loeb & Co. Participations in Originations of All Houses	708,110	100.0		
Total: Participations by Eight Houses in Kuhn, Loeb & Co. Originations			694,578	65.9
Total: All Issues Managed or Co-Managed by Kuhn, Loeb & Co.			1,053,603	100.0

Footnotes at end of table.

Amount and Percent of Participations of Selected Investment Banking Firms in Issues Managed or Co-Managed by Those Firms, June 14, 1934-June 30, 1939—Continued

[Amounts in thousands of dollars]

PART III—FIRST BOSTON CORPORATION

	The First Boston Corp. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by The First Boston Corp.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	139,615	19.7	.....	.....
Kuhn, Loeb & Co.	61,523	8.7	7,217	0.7
The First Boston Corporation.....	241,016	34.0	241,016	24.3
Blyth & Co. Inc.	25,750	3.6	39,335	4.0
Dillon Read & Co.	40,641	5.7	6,717	0.7
Mellon Securities Corp.	13,092	1.9	14,312	1.4
Harriman Ripley & Co., Inc.	10,750	1.5	50,886	5.1
Smith, Barney & Co. ²	28,238	4.0	56,704	5.9
Total: The First Boston Corporation Participations in Originations of Eight Houses.....	590,625	79.1	.....	.....
Total: The First Boston Corporation Participations in Originations of All Houses.....	709,045	100.0	.....	.....
Total: Participations by Eight Houses in The First Boston Corporation Originations.....	.....	.....	418,187	42.1
Total: All Issues Managed or Co-Managed by The First Boston Corporation.....	.....	.....	992,786	100.0

PART IV—BLYTH & CO., INC.

	Blyth & Co., Inc., Participations in Issues Managed or Co-Managed by indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Blyth & Co., Inc.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	99,711	21.4	10,000	2.4
Kuhn, Loeb & Co.	25,851	5.5	12,100	2.9
The First Boston Corporation.....	39,335	8.4	25,750	6.1
Blyth & Co., Inc.	114,011	24.5	114,011	26.9
Dillon Read & Co.	29,144	6.2	7,500	1.8
Mellon Securities Corp.	7,540	1.6	2,250	0.5
Harriman Ripley & Co., Inc.	26,529	5.7	30,100	7.1
Smith, Barney & Co. ²	13,827	3.0	31,708	7.5
Total: Blyth & Co., Inc. Participations in Originations of Eight Houses.....	355,948	76.3	.....	.....
Total: Blyth & Co., Inc. Participations in Originations of All Houses.....	466,796	100.0	.....	.....
Total: Participations by Eight Houses in Blyth & Co., Inc. Originations.....	.....	.....	233,419	55.2
Total: All Issues Managed or Co-Managed by Blyth & Co., Inc. ....	.....	.....	423,592	100.0

Footnotes at end of table.

Amount and Percent of Participations of Selected Investment Banking Firms in Issues Managed or Co-Managed by Those Firms, June 14, 1934-June 30, 1939--Continued

[Amounts in thousands of dollars]

PART V--DILLON READ & CO.

	Dillon Read & Co. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Dillon Read & Co.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	61,101	24.0	7,500	1.1
Kuhn, Loeb & Co.	7,300	2.9	23,250	3.4
The First Boston Corporation.....	6,717	2.6	40,641	5.9
Blyth & Co., Inc.	7,500	2.9	29,144	4.3
Dillon Read & Co.	158,864	62.4	158,864	23.3
Mellon Securities Corp.	2,000	0.8	16,139	2.4
Harriman, Ripley & Co. Inc.	1,800	0.7	30,842	4.5
Smith, Barney & Co. ²			23,864	3.5
Total: Dillon Read & Co. Participations in Originations of Eight Houses.....	245,282	96.3		
Total: Dillon Read & Co. Participations in Originations of All Houses.....	254,718	100.0		
Total: Participations by Eight House in Dillon Read & Co. Originations.....			330,244	48.4
Total: All issues Managed or Co-Managed by Dillon Read & Co.			682,070	100.0

PART VI--MELLON SECURITIES CORP.

	Mellon Securities Corp. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Mellon Securities Corp.	
	Amount	Percent of total	Amount	Percent of total
Morgan Stanley & Co. Inc. ¹	81,605	30.1	4,500	2.1
Kuhn, Loeb & Co.	14,323	5.3	6,938	3.3
The First Boston Corporation.....	14,312	5.3	13,092	6.1
Blyth & Co., Inc.	2,250	0.8	7,540	3.5
Dillon Read & Co.	16,139	6.0	2,000	0.9
Mellon Securities Corp.	75,816	28.0	75,816	35.6
Harriman Ripley & Co., Inc.	6,902	2.5	9,831	4.6
Smith, Barney & Co. ²	15,265	5.6	13,117	6.2
Total: Mellon Securities Corporation Participations in Originations of Eight Houses.....	226,612	83.6		
Total: Mellon Securities Corporation Participations in Originations of All Houses.....	271,100	100.0		
Total: Participations by Eight Houses in Mellon Securities Corporation Originations.....			132,834	62.3
Total: All issues Managed or Co-Managed by Mellon Securities Corporation.....			212,844	100.0

Footnotes at end of table.

Amount and Percent of Participations of Selected Investment Banking Firms in Issues Managed or Co-Managed by Those Firms, June 14, 1934-June 30, 1939--Continued

[Amounts in thousands of dollars]

PART VII—HARRIMAN RIPLEY & CO., INC.

	Harriman Ripley & Co., Inc. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Harriman Ripley & Co., Inc.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	165,157	23.4	9,000	2.7
Kuhn, Loeb & Co.	103,058	14.6	20,401	6.1
The First Boston Corporation.....	50,886	7.2	10,750	3.3
Blyth & Co., Inc.	30,100	4.3	26,529	8.0
Dillon Read & Co.	30,842	4.4	1,800	0.5
Mellon Securities Corp.	9,831	1.4	6,902	2.1
Harriman Ripley & Co. Inc.	110,895	15.7	110,895	33.4
Smith, Barney & Co. ²	37,822	5.4	17,633	5.3
Total: Harriman Ripley & Co., Incorporated Participations in Originations of Eight Houses.....	538,591	76.4	-----	-----
Total: Harriman Ripley & Co., Incorporated Participations in Originations of All Houses.....	704,872	100.0	-----	-----
Total: Participations by Eight Houses in Harriman Ripley & Co., Incorporated Originations.....	-----	-----	203,910	61.4
Total: All Issues Managed or Co-Managed by Harriman Ripley & Co., Incorporated.....	-----	-----	331,638	100.0

PART VIII—SMITH, BARNEY & CO.

	Smith, Barney & Co. Participations in Issues Managed or Co-Managed by Indicated Firms		Participations by Indicated Firms in Issues Managed or Co-Managed by Smith, Barney & Co.	
	Amount	Percent of Total	Amount	Percent of Total
Morgan Stanley & Co. Inc. ¹	182,489	28.8	4,750	0.9
Kuhn, Loeb & Co.	36,453	5.7	20,435	3.7
The First Boston Corporation.....	58,704	9.2	23,238	5.1
Blyth & Co., Inc.	31,708	5.0	13,827	2.5
Dillon Read & Co.	23,864	3.8	-----	-----
Mellon Securities Corp.	13,117	2.1	15,265	2.7
Harriman Ripley & Co., Inc.	17,633	2.8	37,822	6.8
Smith, Barney & Co. ²	193,851	30.6	193,851	34.9
Total: Smith, Barney & Co. Participations in Originations of Eight Houses.....	557,819	88.0	-----	-----
Total: Smith, Barney & Co. Participations in Originations of All Houses.....	634,120	100.0	-----	-----
Total: Participations by Eight Houses in Smith, Barney & Co. Originations.....	-----	-----	314,188	56.6
Total: All Issues Managed or Co-Managed by Smith, Barney & Co.	-----	-----	555,274	100.0

¹ From date of organization, Sept. 16, 1935.

² Data are for Edward B. Smith & Co. prior to the merger with Charles D. Barney & Co., December, 1937, and for the new firm thereafter.

NOTE: In those issues in which there were co-managers, the amounts of the issues were divided equally among the co-managers.

Source: Compiled from data supplied by the respective firms to the Investment Banking Section of the Monopoly Study of the Securities and Exchange Commission. Revised after Jan. 12, 1940 in accordance with additional data submitted, except in the cases of Morgan Stanley & Co. Inc. and Harriman Ripley & Co., Inc.

EXHIBIT No. 2074

(Chart based on following statistical data appears in text on p. 12708)

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Distribution of Sales to Various Classes of Purchasers by the Distributing Group—Six Bond Issues, 1936-1938

[Percentage of each Issue]

Issuer	Issue	Percentage of Issue Sold to:				
		Banks	Insurance Companies	Charitable & Educational Foundations	Security Dealers	Individuals
1. Toledo Edison Co.....	1st Mtge. 3½%-1968.....	55.4	26.7	3.5	6.7	7.7
2. Atlantic Refining Co.....	Debenture 3%-1953.....	58.5	29.6	4.8	3.9	3.2
3. Chesapeake & Ohio Railway.	Ref. & Impt. 3½%-1963..	18.8	74.0	1.5	3.3	2.4
4. U. S. Steel Corp.....	Debenture 3¼%-1948.....	60.9	16.5	6.2	5.5	10.9
5. U. S. Steel Corp.....	Debenture 3¼%-1948.....	61.0	16.5	6.6	4.3	11.6
6. American Telephone & Telegraph Co.	Debenture 3¼%-1966.....	48.6	36.0	2.8	2.4	10.2
7. Philadelphia Electric Co...	1st Mtge. 3½%-1967.....	36.7	45.8	3.5	9.4	4.6
8. Average ¹		46.5	38.1	3.8	5.1	6.6

¹ In computing the averages for all the issues the distribution used for U. S. Steel Corp. was the average of the two distributions set forth.

Source: Lines 1-4, Securities and Exchange Commission Questionnaire; lines 5-7, Morgan Stanley & Co., Inc., Questionnaire.

[Percentage of each issue]

EXHIBIT No. 2075

[Prepared by the staff of the Investment Banking Section, Monopoly Study, Securities and Exchange Commission]

Distribution by States of the Sales Made by the Distributing Group of Six Bond Issues, 1936-1938

[Percentage of each issue]

State	Average of Six Issues ¹	Toledo Edison Co. 1st Mtge. 3½% 1968	Atlantic Ref. Co. Deb. 3% 1953	C. & O. Ry. Co. Ref. & Imp. 3½% 1963	U. S. Steel Corp. Deb. 3¼% 1948	U. S. Steel Corp. Deb. 3¼% 1948	American Tel. and Tel. Co. Deb. 3¼% 1966	Philadelphia Electric Company 1st Mtge. 3¼% 1967
1. New York City.....	34.9	25.1	22.3	63.2	30.2	30.3	30.3	33.3
New York, excl. N. Y. C.	3.2	4.1	2.5	0.9	3.8	3.9	3.7	4.1
Total: New York.....	38.1	29.2	24.8	64.1	34.0	34.2	34.0	42.4
2. Massachusetts.....	8.6	13.5	8.2	2.4	10.3	10.2	9.6	7.9
3. Pennsylvania.....	14.4	11.2	25.2	7.8	13.3	13.3	12.0	17.0
4. New Jersey.....	8.6	4.8	11.3	10.6	6.6	6.8	9.8	8.3
5. Illinois.....	4.8	8.6	5.9	1.2	6.2	6.4	4.1	2.6
6. California.....	2.5	4.0	2.4	0.5	3.2	3.2	3.2	1.6
7. Ohio.....	3.4	3.3	2.9	5.7	3.1	3.5	2.9	2.0
8. Wisconsin.....	2.2	4.5	2.9	1.4	1.7	1.7	1.7	1.3
9. Connecticut.....	2.8	2.2	1.9	0.5	3/5	3.4	3.3	5.6
10. Missouri.....	1.1	1.1	2.4	(²)	1.3	1.4	1.4	0.2
11. Minnesota.....	1.4	1.3	1.9	0.5	2.0	2.0	1.4	1.1
12. Rhode Island.....	1.1	1.9	1.5	0.1	1.1	1.0	1.4	0.7
13. Maryland.....	1.1	1.5	1.1	0.2	1.7	1.8	1.4	0.6
Total: 13 States.....	90.1	87.1	92.4	95.0	88.0	88.9	86.2	91.3
Balance of U. S. & Foreign.....	9.9	12.9	7.6	5.0	12.0	11.1	13.8	8.7
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

¹ In computing the average distribution by states for the six issues, the distribution of United States Steel Corporation bonds was taken as the average of the distributions disclosed by the questionnaires of the Securities and Exchange Commission and of Morgan, Stanley & Co.

² Less than 0.1%.

Source: The distributions of the issues of the Toledo Edison Company, Atlantic Refining Company, C. & O. Railway Company, and the first column of United States Steel Corporation were compiled from a questionnaire sent by the Investment Banking Section of the Securities and Exchange Commission to the respective distributing groups.

The distribution of the issues of the American Telephone & Telegraph Co., Philadelphia Electric Company, and the second column of the United States Steel Corporation were compiled from the results of a questionnaire sent to the members of the distributing groups by Morgan, Stanley & Co., Inc., the manager of these issues, on February 10, 1939.

SUPPLEMENTAL DATA

The following letters are included at this point in connection with Mr. Hancock's testimony, *supra*, pp. 12350,*12354, 12359, 12364, 12366, 12369, 12371, 12373, 12390, and 12408.

JANUARY 27, 1940.

MR. JOHN M. HANCOCK,

Lehman Brothers, 1 William Street, New York, N. Y.

DEAR MR. HANCOCK: An examination of the transcript of the hearings before the Temporary National Economic Committee on January 8, 1940, indicates that at several points you promised to make available material which you did not then have in hand, and that in other cases you accepted certain statements subject to later correction.

These instances are listed in this letter for your convenience:

1. In connection with the financing in 1924 which resulted in the creation of the National Dairy Products Corporation, you explained that Lehman Brothers and Goldman, Sachs & Company had had equal participations in that underwriting. You were not certain of this, however, and promised to correct the record, if your recollection of this matter proved to be incorrect.

2. The question was asked, "Do you recall any instances in which Lehman Brothers afforded Goldman, Sachs an opportunity for oral argument, so to speak, before a corporation covered by the list?" Your recollection was not clear about more than one such instance, but you suggested that you would prepare a memorandum for the Committee setting forth such instances.

3. In connection with the participations in various trading accounts in securities of the Archer-Daniels-Midland Company between 1927 and 1933, it was suggested that Lehman Brothers and Goldman, Sachs & Company each had a one-third interest in these accounts. During the course of the hearings you accepted this statement subject to verification.

4. During the course of the hearings there was a discussion of the practice of dividing commissions in trading or brokerage accounts involving securities of a company where there was a banker-issuer relationship and where the transactions were for the account of the company, its officers, or principal stockholders. The question was asked, "Do you know of any instance where the members of a syndicate, other than the manager or managers, have ever shared in the commission derived from a trading account?" You answered, "I haven't thought of your question before and I don't think of a case at the moment," but you suggested that you would prepare a memorandum for the Committee on this point.

5. Later there was discussion covering the sharing of commissions between Lehman Brothers and Kuhn Loeb & Company in connection with purchases of the 3½% sinking fund debentures of 1952 for the account of Tidewater Oil Company; and of the sharing of commissions in connection with the purchases of securities for the account of Aviation Corporation with Brown Brothers, Harriman & Company. You agreed to submit data dealing with why commissions were divided and what services each of the houses performed in connection with these transactions in consideration of the shared commissions.

6. You were not clear whether Lehman Brothers refused to accept a joint managership of the issue by General Foods Corporation in 1938, subject to the condition that they do the actual work without receiving a management fee. Your reply was, "I will have to verify; my recollection is not clear."

Your cooperation in completing the record with respect to these matters would be greatly appreciated.

Sincerely yours,

PETER R. NEHEMKIS, JR.,

Special Counsel, Investment Banking Section, Monopoly Study.

OLAltman: alb

13007

LEHMAN BROTHERS,

ONE WILLIAM STREET, NEW YORK, February 16, 1940.

Mr. PETER R. NEHEMKIS, Jr.,

*Special Counsel, Investment Banking Section, Monopoly Study,
Securities and Exchange Commission, Washington, D. C.*

MY DEAR MR. NEHEMKIS: With reference to your letter of January 27th, and taking up the six numbered matters upon which you asked for material, which I assume is to be added to the present record, I submit the following statements, each numbered in accordance with the points as numbered in your letter.

1. The interests of Lehman Brothers and Goldman, Sachs & Co. in the financing which resulted in the creation of the National Dairy Products Corporation early in 1924 were identical.

2. We have no record of any case arising since January 5, 1926, where it has been necessary to follow the procedure outlined in the memorandum of January 5, 1926 which provided that "if any of the listed companies refuses in the future to have either firm participate in a piece of financing, the other firm will endeavor to have such excluded firm afforded a full opportunity of presenting its case". The incident concerning R. H. Macy & Co., Inc. financing arose three years before the memorandum was signed, when R. H. Macy & Co., Inc. expressed the wish not to have Goldman, Sachs & Co. appear but had no objection to our sharing any profit with them.

3. Lehman Brothers and Goldman, Sachs & Co. each had a one-third interest in the original offering of the Archer-Daniels-Midland Company, and the various trading accounts involving stock of that company during the years from 1927 to 1933 were formed on the same basis.

4. A division of stock exchange commissions resulting from the operation of trading accounts of the type which was under discussion, namely those involving securities of corporations where we had acted as one of the managers of an issuing syndicate, has, in our case, so far as I can find, not been extended to include any stock exchange members who were members of the syndicate but not one of the managers thereof, or to other stock exchange houses not connected with the business, such divisions being in all cases confined to co-managers of the account who were stock exchange members, or possibly curb members if the security was listed on that exchange.

As a general comment on this situation, may I mention that the corporation concerned is, of course, free to place its brokerage orders with whatever exchange members it may select or with non-members if it wishes, the usual practice being to choose member firms as their charges consist of the standard brokerage charge without any additional charge such as a non-member would customarily add to cover his added expense beyond the brokerage charge. If the company decides to have such transactions handled by two member firms, it has the choice of three procedures.

(a) Permit the two firms to divide orders between themselves in such a way that the commissions obtained by each one will be equal;

(b) Give the whole order to one firm to place buying and selling orders, the firm handling the business to divide the commissions equally with the other firm;

(c) For the company to place buying and selling orders from time to time with one or the other of the two firms in such a way that they would not come into competition with one another in the market and that the commissions would be equal.

It seems obvious that (a) or (b) are more convenient for the company.

5. As to the purchases of Tide Water Oil 3½% Sinking Fund Debentures by Kuhn, Loeb & Co. for account of the company and their division of the New York Stock Exchange commissions with us. I believe, on the facts now available, that procedure (b) outlined above applied in this case.

In the case of the orders placed by The Aviation Corporation for the purchase of market securities for its portfolio, the same condition prevailed as to the services rendered by the bankers, as Lehman Brothers and Brown Bros., Harriman & Co. had jointly managed the group in connection with the original issue and marketing of shares of the Corporation's stock and both firms were represented on the company's directorate. In this case, procedure (b) was followed with a slight variation—orders for certain securities being given to Lehman Brothers and orders for certain other securities being given to Brown Bros., Harriman & Co., who divided the commissions each with the other, using this method for equalization.

6. With reference to your point numbered 6, I think your letter does not correspond with the question left open in the testimony and the following is submitted to complete the record, though it will not appear to be an exact reply to the question numbered 6 in your letter. At page 498, second column, in answer to your question, "Mr. Hancock, your firm refused that?", my answers indicated that I did not recall and would have to verify. I have now discussed the matter with one of my partners, and I find that the answer should be as follows: "My firm did *not* refuse to accept the proposal of February 1, 1938."

The foregoing is in reply to your letter of January 27th, and I submit the following comment to invite attention to a few minor errors in the verbatim record, together with a few suggestions as to clarification and completion of the record where it appears lacking.

Page 482, second column, line 8: I believe my name belongs in place of yours.

Page 483, first column, 22nd line from bottom: 1923 should be changed to 1924.

Page 483, third column, line 27: First word, "not", should be omitted. My answer following the last word should be completed so as to read "correct".

Page 488, third column lines 6 and 23, typographical error, the word in the record being "findings". Presumably, "finder's fee" was used.

Page 489, first column, end of the first answer: I think it would be a more understandable answer if the following words were added, though I think it is not vital that they be added. "In certain cases long positions were taken over from syndicate accounts to permit the closing of the syndicate accounts".

Page 489, first column, 25th line from the bottom of the page now reads: "Apply to trading *and* outstanding securities". I think your question was "apply to trading *in* outstanding securities".

Page 489, first column, second line from bottom of page, the word "who" is probably in error, the word "to" probably ~~be~~ the word used.

Page 489, second column, line 9, where I refer to "large holders", it will be correct to refer to "large stockholders".

Page 490, second column, 10th line from bottom, the expression should be "were stock exchange commissions".

Page 490, second column, your question at the foot of the page: I think there is some error in transcription. From my answer it would appear that your question had two parts, first whether the manager of an issue had an obligation to share profits with important stockholders, and also whether he had an obligation to share with co-managers. It may be that your question was general and was expressed in a double barreled form as to whether there was an obligation generally to share stock exchange commissions with stockholders or with co-managers. It was my intention to answer clearly that as between Lehman Brothers and Goldman Sachs & Company there is such an expressed obligation.

Page 490; third column, 11th line from bottom: The word "with" should be "for".

Page 491, first column, last three lines of my second answer should read: "was specifically covered with regard to our two firms, and the reason for the obligation in our case was that it had been specifically stated in the agreement."

Page 491, first column, Mr. O'Connell's last question and two following questions in next column, I think it should be indicated that this was not a trading account but commission orders for the purchase of various market securities.

Page 492, third column, starting with your third question from the bottom of the page, the name in the third line should be E. H. Betts. Where Carl Conway's name is referred to, it should be "CARLE". Though on this point you were interrogating Mr. Sachs and not me, I suggest that you verify the initials of the Mr. Cluett referred to. I think the initials were G. A.

Page 498, first column, your last question, first line, should be: "This is a letter from Mr. Robert Lehman" rather than "to Mr. Robert Lehman", as it now appears.

Page 498, second column, after the exhibit of Robert Lehman's letter: I think that you were addressing me and that I answered the two questions rather than Mr. Sachs. From the text it appears quite certain that I answered the first question, and I may have answered the second one.

Page 500, first column, 27th line from the bottom: The date 1936 should be 1926.

Page 502, first column, my first answer: I do recall that I didn't quite catch your question quickly, but that I answered to the effect that it must have been Mr. Weinberg; that I knew of no one else referred to in general terms.

Page 503, second column, first answer—should be, "I did understand at that time he *had*" rather than "hadn't".

Page 504, third column, my first answer, last few words should read: "at that stage of the transaction"

Page 504, third column, my last answer is inaccurately reported. I think the changes I suggest are only to correct errors in the record and I believe the answer would be better if it read this way: "The outside interest of the banker is two points. Now if by competitive bidding we forced the banker to purchase the security from the issuer at 101, and if the two points spread was fair value for the services rendered by the banker, the result would be a price to the public of 103." The following sentence should read: "Now who is wise enough to say what is wise or right at that moment?"

Page 505, first column, my last answer should be: "It has been so found".

Page 505, first column, after your suggestion that my firm had contradicted everything I had said about competitive bidding, I think that in fairness to you the record should show that you said there was a difference of opinion about that. Unfortunately, we didn't go back to the point and I would have been glad to have taken the position which I have all along that my views about competitive bidding are not contradicted by the competitive bid for the Cincinnati Union Terminal Company security. After a decision has been made by proper and final authority that securities are to be sold by competitive bidding I believe that a firm like ourselves does not surrender its views by entering a competitive bid.

Page 505, third column, fifth line from the bottom: I probably used the word "tabulations" but quite obviously I meant "items".

Page 506, Mr. Henderson's question at the start of the first column: I think the word "peg" as used in the third line should be "pay".

Regarding Page 485, your long question in the middle of the first column: I wasn't asked the question but it may be important to an understanding of the facts to have these additional facts inserted into the record in such a position as suits your purpose. During the period from 1926 through 1939, a compilation from our records indicates that the firm of Lehman Brothers managed a total of corporate and municipal underwritings aggregating approximately \$1,425,000,000. Out of this total \$1,250,000,000 represented issues in which Goldman Sachs & Company had no interest, their interest being limited to a share in underwritings aggregating \$175,000,000 during the fourteen year period.

Sincerely,

JOHN M. HANCOCK.

jmh-mf

The following letters are included at this point in connection with Mr. Sachs's testimony, supra, pp. 12346, 12354, 12359, and 12367.

JANUARY 27, 1940.

Mr. WALTER SACHS,

Goldman, Sachs & Co., 30 Pine Street, New York, N. Y.

DEAR Mr. SACHS: An examination of the transcript of the hearings before the Temporary National Economic Committee on January 8, 1940, indicates that at several points you promised to make available material which you did not then have in hand, that in other cases you accepted certain statements subject to later correction, and that in one case a statement appears in the record, probably through some error in transcription, which you might like to correct.

These instances are listed in this letter for your convenience.

1. It was suggested that the corporations covered by the memorandum of 1926 issued approximately \$200,000,000 of securities during the next decade. You replied that, "I can't substantiate your figure because I haven't gone back to the record. There was a very substantial amount done by some, not all, of these companies in the subsequent years." Would you care to make any further comment at this time?

2. The question was asked, "Do you recall any instances in which Goldman, Sachs & Co. afforded Lehman Brothers an opportunity for oral argument, so to speak, before a corporation covered by the list?" Your recollection was not clear on this point, but you suggested that you would prepare a memorandum detailing such instances.

3. During the course of the hearings it was stated that there was a disposition of 50,000 shares of stock of Sears, Roebuck & Company for the Estate of Julius Rosenwald in 1933, and of 26,000 shares of the same stock for the Rosenwald Fund later in the year. You accepted these figures subject to future correction.

4. It was suggested during the course of the hearings that the 1906 financing for the company that later became the General Cigar Company was undertaken by a 3/3 account, in which the members were Goldman, Sachs & Co., Lehman Brothers and Kleinwort & Co. The transcript indicates that you were not clear whether Kleinwort & Co. were a member of this underwriting group, and that you promised to correct the record in the event that they were not members.

5. In discussing the size of selling groups, you stated that, "We sometime have as many as three or four, perhaps five or six or seven dealers to become members of this selling group * * *" You apparently meant in this connection a selling group of from three to seven hundred dealers. Would you care to make a correction to this effect?

Your cooperation in completing the record with respect to these matters would be greatly appreciated.

Sincerely yours,

PETER R. NEHEMKIS, Jr.,
Special Counsel, Investment Banking Section, Monopoly Study.

OLAltman:alb

GOLDMAN, SACHS & Co.
30 Pine Street

Boston
Chicago
Philadelphia
St. Louis

NEW YORK, February 6, 1940.

WES:RVH

Mr. PETER R. NEHEMKIS, Jr.,
Special Counsel, Investment Banking Section, Monopoly Study, Securities
and Exchange Commission, Washington, D. C.

DEAR MR. NEHEMKIS: I have your letter of January 27 and I am glad to comment about the various points which you raise. I understand also that Art Dean has a few obvious instances of incorrect transcription of the testimony which he will be passing on to you in due course.

As to your first point, let me state I feel certain that although it is not correct that "the issuance of these securities was governed by the memorandum of 1926," nevertheless the corporations listed certainly issued in the aggregate at least \$200,000,000 of securities. The sale of many of these issues was handled by Goldman, Sachs & Co. and Lehman Brothers in accordance with the memorandum. Of course Goldman, Sachs & Co. itself headed offerings of far more than \$200,000,000 of other securities during the period, and in the offerings which I have in mind Lehman Brothers did not participate either under the provisions of the memorandum or otherwise. Furthermore, as you know, \$200,000,000 is a minute item in comparison with the \$50,000,000,000 of new security offerings during the same period, as tabulated by Standard Statistics Company.

I am content to let the record stand as it is with regard to your second point inasmuch as the Pillsbury instance is the only item of this kind which comes to mind, and inasmuch as formal operation under the memorandum would not ordinarily be necessary in view of the acquaintance of both firms with most of the companies.

Your third point is entirely clarified by exhibits 1784, 1785, 1786 and 1787, which you offered in evidence.

Examination of our records indicates that Kleinwort, Sons & Co. were not associated with us as originating bankers in the financing in 1906 of United Cigar Manufacturers.

Obviously, the word "hundred" was inadvertently omitted from the stenographic record with regard to the number of dealers who have a part in "selling groups."

Thank you very much for calling these matters to my attention.

With best regards,

Very truly yours,

WALTER E. SACHS.
(Walter E. Sachs.)

The following letters are included at this point in connection with Mr. Hancock's testimony, supra, p. 12402.

Cable Address: "LADYCOURT," New York

SULLIVAN & CROMWELL
48 Wall Street, New York

JANUARY 22, 1940.

PETER R. NEHEMKIS, Jr., Esq.,

Special Counsel, Investment Banking Section, Monopoly Study, Securities and Exchange Commission, Washington, D. C.

DEAR PETER: I am sorry not to have replied to your letter of January 15, 1940 earlier but I was in Washington for several days last week at another hearing before the S. E. C.

I realize that some of Mr. Hancock's testimony is based upon Mr. Palmer's reply of May 25, 1937 but inasmuch as the other correspondence appears verbatim in the record we feel, after a discussion, that it would be better to have the letter of May 25, 1937 appear in verbatim form also inasmuch as the record is not really complete without it. You will recall that Mr. O'Connell, in particular, was interested in the so-called "threat" to resign, which is covered fully in Mr. Palmer's letter.

Sincerely yours,

ARTHUR H. DEAN.

[From the Files of Lehman Brothers]

[Copy]

C. R. PALMER
President

CLUETT, PEABODY & Co., INC.

10 East Fortieth Street, New York, N. Y.

MAY 25, 1937.

MR. JOHN M. HANCOCK,

Lehman Brothers, 1 William Street, New York City.

DEAR JOHN: Due to my absence from the city on a business trip my reply to your letter of May 18th has been delayed a few days.

Due either to misinformation or a lack of information, it seems to me you have arrived at some conclusions and some assumptions that are just not in accordance with the facts.

To begin with, you ask whether there was any reason why the proposed financing should not be handled on a basis of equality for the two banking firms. I think you know the reasons for this just as well as I do. It is just because the two banking firms are not working together, which certainly makes it very unpleasant for us and puts us in a position which I do not think we have any right to be put in.

The problem of the new financing is not a new one and you may recall that I rather casually discussed it with you the day that I had luncheon with you several months ago. That is, I told you then that the way our business was growing it would appear as though we would need additional working capital some of these days and I felt the time to do it was when we could. Furthermore, the plan was arrived at by members of the Executive Committee in connection with Mr. Green and later with Mr. Weinberg. The entire matter had been discussed with the Board at various times, although not in detail as to the plans. That, naturally, was left to the Committee and the proposed plans submitted to the Board at the meeting on May 11th. Up until that time no definite agreement had been reached. No matters of importance are entered into without submission to the Board . . . and by the Board I mean the working Board and those who attend our regular meetings, so your assumption, that this whole thing was done without any previous discussion of the Board is erroneous.

Your question of calling the preferred stock is a very natural one. It not only should have been considered, but it has been carefully considered for over a year, and the only reason that nothing was done about it is because either through oversight or poor judgment at the time the stock was originally issued

the Company finds itself "hung up" with what might be called a non-callable stock. It can be called only at the rate of 2% a year and we are way ahead of that program already.

Naturally a great deal of study has been made by me because I do not think any one could be more interested than I am that we do the right thing. I cannot speak for Mr. G. A. Cluett and Mr. E. H. Cluett whom you mention in your letter to me, but speaking for myself, I should say that the reason *the financing could not be handled on an equality basis is because of the relationship of the firms.*

Over the telephone on May 11th I informed the Board that if it seemed wise to them to postpone action, that that could be done. *Then when I found this could necessitate an additional audit and that we could not use our figures as of December 31st, I saw no reason why we should be put to that expense and trouble.*

The facts were gone into very thoroughly before any decision was reached, and, furthermore, John, this is not the first case of this kind that has come up in the past year or so.

Another assumption that I seem to read in your letter is a threat of resignation on the part of another banker. There was no such threat made. As a matter of fact, he told me when we were having this discussion over the phone on May 11th that he would gladly step aside and let your firm take the whole thing and that it would not in any way cause any change in his feelings towards our Company or in his relationship to the Company, so I see in this no attempt at a threat or control of the Board.

Our change in position was due naturally to our desire to go on with our plans in order to be able to use our December 31st audit.

Personally I feel that the financing plans that we have in mind are sound and to the best interests of the Company, otherwise we would not go through with them.

It was most embarrassing to me, and I know it was to other members of the Board, to be put on the spot because of a quarrel between banking houses, and I think it is most unfair that we should be made in any way to suffer because of this. I personally have suffered a great deal myself, and I have no desire to do anything that would hurt anybody, but apparently here is a case where somebody had to be hurt, and not through any fault of mine.

I should like to talk with you, of course, as I deeply regret the unpleasantness that this matter has caused, and naturally it is my earnest hope that the entire Board will be in agreement on our plans.

Sincerely yours,

/s/ C. R. PALMER.

The following documents are included at this point in connection with the testimony of Monday, January 8, 1940, supra, pp. 12343 to 12415.

LEHMAN BROTHERS,

One William Street, New York, January 30th, 1940.

Mr. PETER R. NEHEMKIS, Jr.,

*Special Counsel, Securities and Exchange Commission,
Washington, D. C.*

DEAR MR. NEHEMKIS: Mr. Hancock has handed me for reply your letter of January 27th addressed to him, as he has just returned after an absence from the office of several weeks.

In accordance with your request, I enclose herewith a signed stipulation as to the four letters mentioned by you, additional copies of which I enclose in order that there may be no misunderstanding as to the letters referred to. You will note that I have corrected the initials of Mr. Chester's name in the stipulation to read "C. M. Chester."

We wish to thank you for permitting us to identify these letters by stipulation rather than having to appear in person to identify them.

Very truly yours,

EDWIN GIBBS.

EG: S

STIPULATION

It is hereby stipulated and agreed that the documents listed below are true copies of original communications or carbon copies from the files of Lehman

Brothers and that they were received or sent, as the case may be, by Lehman Brothers.

Date	Description	To	From
Dec. 22, 1937	Letter.....	Mr. C. M. Chester.....	Mr. Robert Lehman.
Feb. 1, 1938	Letter.....	Lehman Brothers.....	General Foods Corp.
May 19, 1937	Letter.....	Mr. Sanford L. Cluett.....	Mr. R. O. Kennedy.
Aug. 20, 1937	Letter.....	Cluett Peabody & Co.....	Mr. John M. Hancock.

(Signed) LEHMAN BROS.

The following letter from Robert Lehman to C. M. Chester is included at this point in connection with Mr. Hancock's testimony, supra, p. 12389.

DECEMBER 22, 1937.

Mr. C. M. CHESTER,
General Foods Corporation,
250 Park Avenue, New York City.

DEAR CLARE: I want to tell you that I deeply appreciate the very fair way in which you handled the matter which we discussed today. As I told you, I feel that the suggestion which you made is thoroughly satisfactory to me and my firm.

In order that there may be no misunderstanding as to what should be considered "an equal basis," I am giving you the following notes which cover the more important points so that you may have them before you.

Your suggestion that G. S. & Co. should handle the business in their office is entirely satisfactory to me although, of course, I consider that that is a real privilege.

1. Both firms to share equally in the profits and to take the same commitment. Any step-up to be shared equally by both firms.

2. Both firms to be syndicate managers and both signatures to appear on all syndicate and selling group letters and letters of confirmation.

3. Both names to appear on the same line in all newspaper advertising and any syndicate, selling group and other letters. Both names to be included on a parity basis in newspaper publicity as jointly heading the business.

4. Syndicate and selling groups to be formed jointly as to who should be included therein.

Yours sincerely,

rlc

The following letter from General Foods Corporation to Lehman Brothers, and the attached copy of a resolution are included at this point in connection with Mr. Hancock's testimony, supra, p. 12390.

FEBRUARY 1, 1938.

MESSRS. LEHMAN BROTHERS,
1 William Street, New York, N. Y.

Attention: Mr. Robert Lehman.

DEAR SRS: Enclosed is a copy of a resolution adopted by our Board of Directors on Thursday, January 27, 1938.

The purpose of this letter is to make to your firm the offer contemplated in the first clause of this resolution.

The expression "without fee" in the resolution is not intended to apply to out of pocket expenses.

Will you please consider the matter, and let me have your decision with respect to it promptly?

Enclosed also is a copy of my letter of this date of Goldman, Sachs & Company, which is self-explanatory.

Very truly yours,

Resolved that the proper officers of this corporation be and they are hereby authorized and empowered, in their discretion, to offer to Goldman, Sachs & Company and Lehman Brothers the joint syndicate managership of the proposed issue of preferred stock of this corporation, the work to be done, without fee, in the office of Goldman, Sachs & Company;

Further resolved that, in the event said offer shall be made and shall not be accepted promptly, thereafter by both firms, the said officers shall offer Lehman Brothers and Goldman, Sachs & Company the joint syndicate managership of the proposed issue of preferred stock of this corporation, the work to be done, without fee, in the office of Lehman Brothers;

Further resolved that, if both offers shall be made by said officers and neither one shall be accepted by both firms, then neither of said firms shall be selected as syndicate manager or as joint syndicate manager for such preferred stock issue.

The following letter from C. M. Chester, General Foods Corporation, to Goldman, Sachs & Co. is included at this point in connection with Mr. Sachs' testimony, supra, p. 12390.

C. M. CHESTER,
Chairman of the Board

GENERAL FOODS CORPORATION
Postum Building, 250 Park Avenue

NEW YORK, *February 1, 1938.*

MESSRS. GOLDMAN, SACHS & COMPANY,
30 Pine Street, New York, N. Y.

Attention: Mr. Sidney J. Weinberg.

DEAR SIR: Enclosed is a copy of a resolution adopted by our board of directors on Thursday, January 27.

The purpose of this letter is to make to your firm the offer contemplated in the first clause of this resolution.

The expression "without fee" in the resolution is not intended to apply to out of pocket expenses.

Will you please consider the matter and let me have your decision with respect to it promptly?

Enclosed also is a copy of my letter of this date to Lehman Brothers, which is self-explanatory.

Very truly yours,

C. M. CHESTER.

The following letter is included at this point in connection with Mr. Hancock's testimony, supra, p. 12396.

COPY OF LETTER FROM MR. R. O. KENNEDY TO MR. SANFORD L. CLUETT

MAY 19, 1937.

Thank you a lot for telling me about Mr. G. A. Cluett's letter. I can understand exactly Mr. Cluett's reaction. I feel sure that he does not understand the situation, just as we did not in the very beginning.

What did hurt me about his letter, though, was the implication that something is being done that would mar the long record of fair and honorable dealings. As you know the Board faced a situation that was not only embarrassing, but most upsetting. Naturally our inclination was to have both of these houses work together as they always have. We have always felt very close to each one, and particularly so to the representatives on our Board. But there has grown up between the two houses an antagonism that we simply could not break through. As you know I had dinner twice with Mr. Hancock and met with Sidney two or three times. We told them how we felt, what we wanted, but we just could not get it. Goldman, Sachs just would not work with Lehman Brothers, and for reasons which to them seem sound, although to an outsider they seem just a little childish, and Mr. Weinberg admitted that they might be so.

The feeling is so intense, however, that in all recent financing *they have not shared*, even though it be for companies in which they are *both represented*.

(Written by hand:) Not represented on Endicott Johnson or Continental Can. Sears, Roebuck would not have Lehman Brothers. (By hand:) No.

National Dairy gave all of the work to Goldman, Sachs.

Endicott-Johnson had Goldman, Sachs do it alone.

Continental Can was recently re-financed with Goldman, Sachs cooperation.

(Written by hand:) How about Macy-Gimbel-General Tire who had old relationships and many others who had the choice.

We pleaded and put all the pressure we could, requesting that they overlook their differences, but those differences were too fundamental and we could do nothing about it. As late as last Friday night, Mr. Weinberg said he would think it over again and see if they could not make an exception. As you know, he has already offered Lehman Brothers full participation as to the amount that each is to have, but he called me up yesterday and said that he could not consent to go along with Lehman Brothers' name appearing along with theirs.

Mr. Weinberg did suggest that we drop Goldman, Sachs altogether and give it all to Lehman Brothers. He promised he would do everything he could to help if we did. Lehman Brothers gave us no such assurance and have not today. Lehman Brothers feel that Goldman, Sachs have taken the position that they would have it all or would not play. That is not the case, whereas I do believe that Lehman Brothers up to now are taking the position that they will not go along if not offered all that they want—half of the participation and the prestige of being a joint principal.

As you know, the Board felt that Goldman, Sachs were in a position to do a better job in this particular instance than Lehman Brothers could alone. We have been supported in this by the examples of other companies who have had similar work to do. Also it is true that Lehman Brothers have been helpful to us, but it is quite as true that Goldman, Sachs have. Goldman, Sachs' interest has been a warm and very cordial one during the last few years, and particularly during the dark years of 1932 and 1933, where on the other hand, I have an impression that Lehman Brothers were willing to drop us altogether back in 1932 and 1933.

It is most unfortunate that this has happened. I know that it has bothered Mr. Palmer, as it has bothered all of us, all out of proportion to its importance. But what can we do? Goldman, Sachs will give Lehman Brothers much of which they ask, but will not accept their name as cooperator. No one could have tried harder to bring about the cooperation than have we. If Mr. G. A. Cluett would talk to Mr. Weinberg for just a few minutes, I am sure he would appreciate that our situation is a difficult one, and that our decision has not been an altogether unwise or unfair one.

Signed by: OAKLEY.

The following letter from John M. Hancock to Cluett, Peabody & Co. is included at this point in connection with Mr. Hancock's testimony, supra, p. 12410.

AUGUST 20, 1937.

(Handwritten:) Cross Ref. made for Statistics.

Messrs. CLUETT, PEABODY & Co.,

10 East 40th Street, New York City.

Attention Mr. C. R. Palmer.

GENTLEMEN: With great regret I hereby resign as a Director of Cluett, Peabody & Company. After careful consideration of all the facts before me and in the light of Mr. Palmer's letter I see no choice but to take this action, recognizing that there may be matters unknown by me but known to your officers that explain your action.

(Handwritten:) Not Sent to File.

After such long service on your board on the part of myself and Mr. Lehman, there cannot longer be any obligation on our part toward the stockholders who bought the stock from us at the time of the original underwriting. Though feeling free of any obligation I have delayed resigning so that the underwriting should be completed and I would be free of any possible charge of harming the

company. My firm did not take any interest in the underwriting as it was desirous of making it clear that a possible profit does not affect our view of the principles involved in this case.

I think it will be admitted that my being on the Board was primarily for the advice of myself and my firm on financing problems. In this recent matter my advice was not asked for in advance of your decision and in connection with that decision two of your principal officers believed inaccurate and incomplete statements about my firm and did not feel under any obligation to discuss these statements with me before accepting them as facts. I would condemn such procedure on the part of a corporation or its management even if I were not involved in their acts.

I ask that this letter be incorporated in the minutes of the meeting of the Board of Directors when it is presented to the Board.

Sincerely,

JMH-MG

JOHN M. HANCOCK.

The following letter is included at this point in connection with Mr. Fuller's testimony, *supra*, p. 12602.

SCHRODER ROCKEFELLER & Co., INCORPORATED

48 Wall Street, New York

JANUARY 24, 1940.

Mr. PETER R. NEHEMKIS, Jr.,

*Special Counsel, Investment Banking Section,
Securities and Exchange Commission, Washington, D. C.*

DEAR MR. NEHEMKIS: In connection with my testimony before the Temporary National Economic Committee on January 11, 1940 and your letter of January 22, 1940, I wish to advise you that Messrs. Sullivan & Cromwell did not furnish any written opinion in connection with the agreement dated August 24, 1936 between Schroder Rockefeller & Co., Inc. and J. Henry Schroder & Co. which was introduced into evidence as Exhibit 1964.

It is my recollection, which is confirmed by inquiry of Messrs. Sullivan & Cromwell, that prior to the time of the execution of the agreement, the question which you raised was given consideration in consultation with Messrs. Sullivan & Cromwell and it was concluded that under all the circumstance J. Henry Schroder & Co. were not "underwriters" as that term is defined in Section 2 subdivision 11 of the Securities Act of 1933 and that therefore no mention of the agreement dated August 24, 1936 need be made in the registration statements.

You will note that the agreement provided that J. Henry Schroder & Co. would take no part, directly or indirectly in the underwriting or disposition of the securities which Schroder Rockefeller & Co., Inc. might underwrite, or assume any responsibility, liability or commitment in connection therewith, it being understood that Schroder Rockefeller & Co., Inc. was to be solely liable with respect to the total amount of its underwriting commitments without any recourse against J. Henry Schroder & Co. or its associates. You will also note that the payment to be made to J. Henry Schroder & Co. was not based on a percentage of any underwriting profits and in fact bore no relation to underwriting profits since under the agreement the sum was payable even though there were losses and was payable with respect to issues in which we might have participated if we had desired to do so even though we elected not to participate.

Under the circumstances, it was felt that J. Henry Schroder & Co. did not buy from or sell any securities for an issuer; that it did not participate or have any participation in the direct or indirect underwriting "of any such undertaking". since they were under no circumstances to receive any of the securities underwritten, and Schroder Rockefeller & Co., Inc. had no right to ask them to take up any part of the securities underwritten or to ask them to compensate us in any way, directly or indirectly, for any losses sustained by us as an underwriter.

I should like to point out also that Schroder Rockefeller & Co., Inc. never took over the securities referred to in paragraph one of the agreement, and that the whole agreement was cancelled on the 26th day of January, 1937.

I trust that this will give you the additional information which you requested.

Very truly yours,

/s/ C. P. FULLER.

Extracts from the following exhibit were read in the course of the testimony of Carlton P. Fuller and Victor Emanuel, *supra*, pp. 12621-12622.

[From the files of Smith, Barney & Co.]

Confidential Memorandum for Record :

July 17, 1934.

CROSS INDEX

XPhiladelphia Company
 —Equitable Gas Company
 —Pittsburgh Railways Company
 XDuquesne Light Company
 XNorthern States Power Company
 XOklahoma Gas and Electric Company
 XLouisville Gas and Electric Company
 XSan Diego Consolidated Gas and Electric Company
 XWisconsin Public Service Corporation
 —Southern Colorado Power Company
 —The California Oregon Power Company
 —Mountain States Power Company
 —Kentucky West Virginia Gas Company
 —Market Street Railway Company
 —Empresa de Servicios Publicos de los Estados Mexicanos, S. A.
 —Deep Rock Oil Corporation (now in receivership)
 —Deep Rock Oil and Refining Company

(NOTE.—X and minus signs (—) above are handwritten.)

GENERAL ARRANGEMENTS PURSUANT TO WHICH INVESTMENT BANKERS ARE SELECTED FOR COMPANIES COMPRISING THE STANDARD GAS AND ELECTRIC COMPANY SYSTEM

The Standard Gas and Electric Company system, which includes the companies named in the above cross-reference, is jointly controlled (through Standard Power and Light Corporation) by United States Electric Power Corporation and H. M. Bylesby and Company. U. S. Electric Power Corporation is, in turn, controlled by the United Founders group (in which David M. Milton's Equity Corporation group has a substantial interest). (Handwritten:) Not true since Dec. 1, 1935.

As of March 2, 1933, U. S. Electric Power Corporation had *demand* bank loans totaling \$12,500,000 (of which Chase National held 50% or \$6,250,000; Guaranty Trust held 33⅓% or \$4,166,666.67; and Chemical Bank & Trust Company held 16⅔% or \$2,083,333.33) which were secured; part of the security consisted of all of U. S. El. Pr. Corp.'s stock holdings in the Standard Power and Light Corporation. Those \$12,500,000 U. S. Electric Power Corporation secured demand notes (dated March 1, 1933) were given to the three banks pursuant to a written agreement between U. S. Electric Power Corporation and the banks dated and executed on March 1, 1933, and all but a small part of them are still outstanding and unpaid.

Among other things, that March 1 agreement contained a provision that U. S. Electric Power Corporation would furnish the banks with a certified list of all contracts to which they were then a party (except those covering ordinary current operations) and agree (so long as any of the \$12,500,000 demand notes remained unpaid) not to change any such contracts without the consent of the banks. The March 1, 1933 agreement also provided that U. S. Electric Power Corporation (recognizing that those contracts were assets which should be available to creditors) *agreed in so far as possible to give the three banks the benefit of such contracts* and pay over to them any consideration received by U. S. Electric Power Corporation therefrom.

* * * * *

One contract covered by the foregoing provisions is a Memorandum dated December 21, 1929, signed by H. M. Bylesby and Company, U. S. Electric Power Corporation and Ladenburg, Thalmann & Co., which sets forth the manner in which investment bankers to handle security issues of the Standard Gas and Electric Company system are to be selected. Subject to certain exceptions (including particularly the financing of the Philadelphia Company and subsidiaries) the general arrangement contemplates that financing shall be undertaken as to interest and liability, at original cost, as follows:

U. S. Electric Power Corporation----- 75%
H. M. Bylesby and Company----- 25%

and if those two *mutually agree* to permit other banking houses to join with them in particular pieces of financing, the respective interests of such other houses shall be provided for ratably out of the basic interests of those two, provided that Bylesby's interest in any piece of financing involving

Northern States Power Company
Louisville Gas and Electric Company
Oklahoma Gas and Electric Company, and
San Diego Consolidated Gas and Electric Company

shall be not less than 20%, irrespective of any interests granted in such financing to other banking houses.

In connection with the March 1, 1933 bank loan negotiations Mr. Louis H. Seagrave, Chairman of the Board of U. S. Electric Power Corporation, verbally confirmed to R. L. Garner, Vice-President and Treasurer of the Guaranty Trust Company, that U. S. Electric Power Corporation would consult the banks (which are parties to the March 1, 1933 bank loan agreement) in connection with subsequent financing of the Standard Gas and Electric Company system.

In connection with specific financing for any part of the Standard Gas and Electric Company system, reference should be made to the December 21, 1929 Memorandum signed by H. M. Bylesby and Company, U. S. Electric Power Corporation and Ladenburg, Thalmann & Co., but the more important provisions of that Memorandum are summarized in a general outline set forth on the following page hereof.

In the following outline: A=H. M. Bylesby and Company; B=United States Electric Power Corporation; C=Ladenburg, Thalmann & Co.; and D=Harris Forbes & Company and Harris Trust and Savings Bank.

	Interest and Liability on Original terms	Leadership which carries with it the syndicate management	Second Place
Standard Power and Light Corporation....	{A=25% B=75% each gives up pro rata to any others.	Selected by B.	A.
Standard Gas and Electric Company.....	{A=25% B=75% each gives up pro rata to any others.	A.....	Selected by B.
Philadelphia Co. & Subsidiaries. {before Jan. 17, 1935	{C's old group including A=50% B+D=50%	Selected by B.	A (3rd place=C). ¹
after Jan. 17, 1935	B=65% A=25% C=10%	"	A.
Duquesne Light Co..... {before Jan. 17, 1935	{C's old group including A=50% B+D=50%	"	C (3rd place=A).
after Jan. 17, 1935	B=65% A=25% C=10%	"	A.
Northern States Power Co. and Subs.....	{A=25% B=75% but A at least 20%.	Selected by B.	A.
Oklahoma Gas and Electric Company....	{A=25% B=75% but A at least 20%.	A.....	Selected by B.
Louisville Gas and Electric Co. and subsidiaries.	{A=25% B=75% but A at least 20%.	Selected by B.	A.
San Diego Consol. Gas & El. Company....	{A=25% B=75% but A at least 20%.	"	A.
Wisconsin Public Service Corporation....	{A=25% B=75% each gives up pro rata to any others.	"	A.
Southern Colorado Power Company.....	"	"	A.
The California Oregon Power Co.....	"	"	A.
Mountain States Power Co.....	"	"	A.
Kentucky West Virginia Gas Co.....	"	"	A.
Market Street Railway Company.....	"	"	A.
California Power Corporation.....	"	"	A.
Empresa de Servicios Publicos de los Estados Mexicanos S. A.	"	"	A.
Deep Rock Oil Corporation (now in receivership)	"	"	A.
Deep Rock Oil and Refining Company...	"	"	A.

¹ Nothing precludes financing without bankers or by direct offering to stockholders or customers. It was contemplated that all customer ownership campaigns should be conducted by A as theretofore but without substantial profit to them.

² Applies to Philadelphia Company only; Dec. 21, 1929 Memorandum provides that in case of subsidiaries of Philadelphia Company (other than Duquesne Light Co.) A and C are to alternate in second and third places in accordance with their then-existing arrangement.

Another contract covered by the provisions of the March 1, 1933 bank loan agreement is *another* Memorandum dated December 21, 1929, signed by H. M. Byllesby and Company and U. S. Electric Power Corporation, which provides, among other things that:

"* * * It is contemplated that whenever any issue of securities shall be made by *Standard Gas and Electric Company* or by any subsidiary or sub-subsidiary thereof, and sold to Bankers, counsel selected by U. S. Electric Power Corporation will represent the bankers * * *."¹

also

"* * * It is contemplated that whenever any issue of securities shall be made by *Standard Power and Light Corporation*, or by any subsidiary or sub-subsidiary thereof (other than *Standard Gas and Electric Company* or any subsidiary or sub-subsidiary of *Standard Gas and Electric Company*) and sold to bankers, counsel selected by H. M. Byllesby and Company will represent the bankers * * *."

WW/EF

W. W.
Webb Wilson.

The following letter was submitted by Mr. Hall in connection with his testimony, supra, p. 12663.

MORGAN STANLEY & CO., INCORPORATED
Two Wall Street, New York

NEW YORK, February 5, 1940.

PETER R. NEHEMKIS, Jr.

*Special Counsel, Investment Banking Section,
Monopoly Study, Securities and Exchange Commission,
Washington, D. C.*

DEAR MR. NEHEMKIS: As you know, I have been in Washington for the past few weeks which accounts for my delay in replying to your letter of January 23, 1940.

As I testified in Washington, I have not any list of suggestions of underwriters made by the Shell Union Oil Corporation. However, in going over the list of underwriters again, I can add to the names mentioned in my testimony the following as having been suggested by the Company:

Blair, Bonner & Company, Chicago, Illinois.
Glore, Forgan & Co., Chicago, Illinois.
G. H. Walker & Co., St. Louis, Missouri.

Very truly yours,

PERRY E. HALL,
Vice President.

¹ Pursuant to this provision, it will be remembered that in connection with the issuance of

\$6,000,000 Louisville Gas and Electric Company (Kentucky) First and Refunding Mtg. 4½% Series C, due 1961 which were publicly offered in February, 1931.

as well as the \$35,000,000 and \$10,000,000 Northern States Power Company (Minnesota) Refunding Mortgage, 4½% Series due 1961, which were publicly offered in March and June, 1931.

by syndicates headed by Harris Forbes & Company (and in each of which the Guaranty Company had an appearing position as well as an interest on original terms) counsel for the bankers were Messrs. Seibert & Riggs, of New York, who are regular counsel for the U. S. Electric Power Corporation.

A Supplement by Dr. Oscar L. Altman of the Securities and Exchange Commission to his testimony on "Concentration in the Management, Underwriting, and Sale of Registered Bond Issues since 1934."

THE ROLE OF COMMERCIAL BANKS IN THE DISTRIBUTION OF REGISTERED BOND ISSUES, AND SOME ASPECTS OF BOND ACQUISITIONS BY LIFE INSURANCE COMPANIES.

This memorandum is a supplement to the testimony presented to the Temporary National Economic Committee on January 12, 1940, on "Concentration in the Management, Underwriting, and Sale of Registered Bond Issues since 1934."¹ Data were there presented on the distribution and sale of six bond issues.² In summary, it was shown that:

(1) Banks, insurance companies, and charitable and educational institutions together accounted for 88.4% of the sales by the distributing group, while individuals accounted for only 6.6%.

(2) Thirty-eight per cent of all sales by the distributing group were made within New York State; thirteen states, including New York, accounted for 90% of all sales.

This memorandum attempts to deal with three additional problems:

(1) The role of commercial banks in the distribution of bonds.

(2) The manner in which life insurance companies acquire their bonds.

(3) The relative importance of the holdings by life insurance companies of five bond issues.

1. ROLE OF BANKS IN THE DISTRIBUTION OF BONDS

Since part of the purchases of bonds from the distributing group by banks and trust companies is re-sold, an attempt was made to determine the amount re-sold and the nature of the purchasers.³ A questionnaire was addressed to one hundred of the largest banks and trust companies by the Investment Banking Section of the Securities and Exchange Commission on March 27, 1939, requesting data on the disposition of the four bond issues covered by the earlier questionnaire of February 25, 1939.⁴

The coverage of the responses to the questionnaires was as follows:

¹ *Infra*, p. 12688.

² The bond issues discussed, and the sources of the data, were as follows:

(a) From questionnaires by the Investment Banking Section of the Securities and Exchange Commission—four issues: (1) Toledo Edison Co., 1st mtge. 3½'s of 1968, principal amount \$30,000,000. (2) Atlantic Refining Co., deb. 3's of 1953, principal amount \$25,000,000. (3) Chesapeake & Ohio Railway Co., ref. & imp. 3½'s of 1963, principal amount \$30,000,000. (4) United States Steel Corp., deb. 3½'s of 1948, principal amount \$100,000,000.

(b) From questionnaires by Morgan Stanley & Co., Inc.—three issues, including the U. S. Steel issue: (1) United States Steel Corp., deb. 3½'s of 1948, principal amount \$100,000,000. (2) American Telephone & Telegraph Co., deb. 3½'s of 1966, principal amount \$140,000,000. (3) Philadelphia Electric Co., 1st mtge. 3½'s of 1967, principal amount \$130,000,000.

³ This section, together with portions of Dr. Altman's testimony of January 12, 1940, complement the remarks made by the Hon. A. A. Berle, Jr. on the distribution of securities. See Hearings before the Temporary National Economic Committee: Savings and Investment, Part 9, p. 3817.

⁴ Listed in footnote 2, above.

TABLE 1.—Coverage of the responses to two questionnaires concerning the distribution of four bond issues: the first, submitted to the distributing group; and the second, to one hundred of the largest banks and trust companies

	Toledo Edison 3½'s, '68	Atlantic Refining 3's, '53	Chesapeake & Ohio Ry. 3½'s, '63	U. S. Steel 3½'s, '48
1. Amount of the issue (in millions).....	\$30	\$25	\$30	\$100
2. Members of the distributing group reported: ¹				
A. An analysis of their sales for these amounts (in millions).....	\$12.5	\$25.3	\$21.7	\$96.7
B. Showing these amounts sold to banks and trust companies (in millions).....	\$3.6	\$14.5	\$4.1	\$57.9
3. Members of the distributing group thus reported an analysis of the sales of these percentages of each issue (2A + 1).....	42%	All	72%	97%
4. Some banks and trust companies reported: ²				
A. An analysis of these purchases from the distributing group (in millions).....	\$5.5	\$6.4	\$7	\$34.5
B. On basis of reports from these numbers of banks.....	66	50	35	86
5. The amounts for which some banks and trust companies reported an analysis thus constituted these percentages of the purchases by all banks and trust companies (4A ÷ 2B).....	64%	44%	17%	60%

¹ According to the questionnaire of Feb. 25, 1939, by the Investment Banking Section of the Securities and Exchange Commission.

² According to the questionnaire of March 27, 1939, to 100 banks and trust companies by the Investment Banking Section of the Securities and Exchange Commission.

³ This issue showed relatively the smallest sale to banks and trust companies and the largest sale to insurance companies. See the discussion immediately following, and footnote 6.

⁴ The sales reported by the distributing group were greater than the amount of the issue. It is possible that this discrepancy is the result of reporting sales in secondary distribution. The nature of the data made it impossible to correct for this over-reporting.

Three of the issues showed a large initial distribution to banks and trust companies, followed by a substantial re-sale. The fourth issue—Chesapeake & Ohio Railway Co.—showed a different pattern. The issue was unusual in that the initial bank purchases were small, only 19 per cent of the total. The manager of the underwriting group sold 45 per cent of the issue to a group of insurance companies, with each underwriter selling an amount in proportion to his underwriting commitment.⁵ In all, the distributing group sold 74 per cent of the issue directly to insurance companies.⁶ Moreover, in view of the limited response by banks and trust companies to the second questionnaire—only 17 per cent of bank purchases being accounted for—the results with respect to this issue are inconclusive.

TABLE 2.—The percentage of three registered bond issues bought from the distributing group by banks and trust companies, and re-sold within three months

	Percentage of issue purchased by banks and trust companies	Amount resold by banks and trust companies within 3 months as—	
		Percentage of their purchases	Percentage of total issue
Toledo Edison, 3½'s, '68.....	55.4%	79.6%	44.1%
Atlantic Refining, 3's, '53.....	53.5	60.3	35.3
United States Steel, 3½'s, '48.....	61.0	45.9	28.0

⁵ For an illustration of the mechanics and procedure involved in such transactions, see the memorandum by The First Boston Corporation in connection with the sale of Southern California Edison Co., Ltd., ref. 3½'s of 1960, offered April 22, 1935 (Hearings: Investment Banking, Part 22, Exhibit No. 1639-14, page —).

⁶ Moreover, it was stated that a substantial part of the issue was not sold by the principal underwriters until more than a year after public offering. The *New York Times* reported (January 5, 1940) that Halsey, Stuart & Company and Otis & Company concluded this \$30,000,000 bond financing by disposing of \$7,600,000 of bonds on January 4, 1940, to a group of insurance companies.

The re-sales by banks and trust companies were rapid. Sixty-two per cent of their purchases of Toledo Edison bonds were re-sold within one week, and 39 per cent of Atlantic Refining Co. bonds were disposed of within the same time. Even in the case of the United States Steel Corp. issue—regarded by the "trade" as primarily a "banking issue" by reason of the industry involved and the short maturity of the bond—29 per cent of the bank and trust company purchases were re-sold within one week. More detailed data on the rate of disposition may be found in Table 3.

TABLE 3.—Disposition by banks and trust companies of their purchases of four bond issues from the distributing group

[Amounts in thousands]

Purchases and their disposition	Toledo Edison 3½'s, '68		Atlantic Refining 3's, '53		Chesapeake & Ohio 3½'s, '63		U. S. Steel 3¼'s, '48	
	Amount	%	Amount	%	Amount	%	Amount	%
1. Purchased by or through reporting banks or trust companies under orders dated not later than one week after initial public offering..	\$5,525	100.0	\$6,376	100.0	\$670	100.0	\$34,943	100.0
2. Disposition of these purchases:								
a. Sold under orders dated not later than one week after initial public offering.....	3,412	61.8	2,448	39.0	95	14.2	10,088	29.2
b. Sold under orders dated later than one week, but not later than one month, after initial public offering.	245	4.4	450	7.1	-----	-----	1,366	4.0
c. Sold under orders dated later than one month, but not later than three months, after initial public offering.	741	13.4	909	14.2	-----	-----	4,375	12.7
d. Remainder, not reported as sold under a, b, and c.....	1,127	20.4	2,529	39.7	575	85.8	18,864	54.1

Source: Compiled from a questionnaire submitted by the Investment Banking Section of the Securities and Exchange Commission, March 27, 1939.

From the foregoing it is clear that banks and trust companies acted as one of the most important cogs in the distribution of these registered bonds to the ultimate investors.

To whom do the banks and trust companies sell? And at what prices? The data submitted on the questionnaires throw some light upon these questions.

The greatest part of the sales made by banks and trust companies, under orders dated not later than one week after public offering, was made at the initial public offering price; just as the greatest part of their security purchases from the distributing group was made at the public offering price:

TABLE 4.—Purchases by banks and trust companies from the distributing group at the public offering price, and re-sales by these banks and trust companies at the same price—Four bond issues

[Both sets of transactions under orders dated not later than one week after public offering]

[Amounts in thousands]

Issue	Purchases at initial public offering price		Re-sales at initial public offering price	
	Amount	Percentage of all their purchases	Amount	Percentage of all their re-sales
Toledo Edison, 3½'s, '68.....	\$4,246	77	\$2,463	72
Atlantic Refining, 3's, '53.....	4,780	75	2,145	86
C. & O. Ry., 3½'s, '63.....	600	90	95	100
U. S. Steel, 3¼'s, '48.....	28,794	83	8,990	89

More complete data on purchases and re-sales are contained in Table 5.

TABLE 5.—*Prices paid the distributing group by banks and trust companies, and prices received by them on re-sales*

[Both under orders dated not later than one week after public offering]

[In thousands]

Issue and its disposition	At initial public offering price	At initial public offering price less concession	At other prices	All transactions
1. Toledo Edison Co., 3½'s, '68				
A. Purchases.....	\$4,746	\$1,014	\$265	\$5,525
B. Re-sales.....	2,463	178	771	3,412
2. Atlantic Refining Co., 3's, '53				
A. Purchases.....	4,780	1,243	353	6,376
B. Re-sales.....	2,145	112	231	2,488
3. C. & O. Ry. Co., 3½'s, '63				
A. Purchases.....	600	70	-----	670
B. Re-sales.....	95	-----	-----	95
4. U. S. Steel Corp., 3¼'s '48				
A. Purchases.....	28,794	542	5,157	34,493
B. Re-sales.....	8,990	-----	1,098	10,088

Source: Compiled from a questionnaire of the Investment Banking Section of the Securities and Exchange Commission.

The data thus indicate that banks and trust companies generally received no compensation in the form of a price differential for buying and re-selling these registered bond issues. They may have rendered this service to their customers free of charge, hoping to benefit by receiving compensating balances and by providing other, profitable services.⁷ Or, they may have received commissions or fees different in form from the dealers' concession or the ¼ point concession to banks. The questionnaire throws no light on these possibilities.

The sales by banks and trust companies were made largely to institutional customers. The most important customers were life and other insurance companies, with other banks and trust companies, including savings banks, second in importance. Individuals were responsible for only a relatively small part of the sales:

TABLE 6.—*Percentage of total sales by banks and trust companies, under orders dated not later than one week after public offering, to insurance companies, other banks, and individuals, of four bond issues purchased from the distributing group*

Issue	Life and other insurance companies	Other banks & trust companies	Individuals
Toledo Edison, 3½'s, '68.....	43%	21%	3%
Atlantic Refining, 3's, '53.....	48%	16%	3%
C. & O. Ry., 3½'s, '63.....	74%	16%	10%
United States Steel, 3¼'s, '48.....	7%	39%	9%

A more detailed analysis of sales is contained in Table 7. It should be noted that a significant volume of sales was made to security dealers. Approximately 13 per cent of total sales, amounting to more than \$2,100,000, was made to dealers.

⁷ For example, see the testimony of Charles E. Mitchell of Blyth & Co., Hearings, Part 22, pp. 11549-11604; and of Mr. B. A. Tompkins of the Bankers Trust Co., *supra*, pp. 12432-12468.

TABLE 7.—*Analysis of sales by banks and trust companies, under orders dated not later than one week after public offering, by classes of purchasers, of four bond issues purchased from the distributing group*

[In thousands]

Class of purchaser	Toledo Edison 3½'s, '68	Atlantic Refining 3's, '53	C. & O. 3½'s, '63	U. S. Steel 3½'s, '48
Life insurance companies.....	\$1,454	\$1,090	\$70	\$75
Other insurance companies.....	25	100		613
Investment cos. (excl. personal holding cos.).....				121
Charitable, educ. and relig. foundations as to which report- ing bank or trust company is trustee.....	15			56
Other charitable, educational, and religious foundations.....	5	125		1,950
Other trusts and estates as to which reporting bk. or trust co. acts in fiduciary capacity.....	131	204	15	964
Savings banks.....	100	70		129
Other banks and trust companies.....	611	398		3,796
Individuals.....	93	64	10	920
Security dealers.....	840	497		741
Others.....	138			723
Total.....	3,412	2,438	95	10,088

Source: Compiled from a questionnaire of the Investment Banking Section of the Securities and Exchange Commission.

2. PURCHASES OF FIVE REGISTERED BOND ISSUES BY LIFE INSURANCE COMPANIES

An analysis was made of purchases of registered bond issues by life insurance companies to determine (a) the number and the size of the separate purchases made; (b) the rate of acquisition of such purchases; and (c) the sources of such purchases. The data were taken from Part 3 of Schedule D of the annual reports prepared by the life insurance companies on the Convention Form.

This Form requires insurance companies to list all purchases of bonds and stocks during the current year, with date of acquisition, name of vendor, price, and other details.

The basic sample for the analysis consisted of the twenty-six largest legal reserve life insurance companies domiciled in the United States.^{7a} Since not all of the companies purchased bonds of each issue studied, and not all reported in the required detail, the samples used consist of from seven to eighteen companies.

Five of the six issues listed in Footnote 2 were studied; the sixth, C. & O. Ry. Co. ref 3½'s of '63, was eliminated since it was offered in December, 1938, which was too late for any purchases to be included in the reports for that year.

(a) *The size and number of insurance company purchases.*—Although the Convention Form calls for a listing of all security purchases, some companies lumped in one entry their purchases from two or more dealers or for two or more days. These companies were excluded from the tabulation.

It is possible that some of the companies included lumped two or more purchases from the same dealer on the same day, for it was noticed that some companies listed the same vendor more than once in one day, while other companies did not show similar entries. To the extent that a company combined two or more purchases in a single entry, it understated the number of purchases.

The number of purchases is, of course, roughly related to the size of the issue. For the two smallest issues, the seven insurance companies studied required a total of 463 (\$30,000,000 Toledo Edison issue) and 471 (\$25,000,000 Atlantic Refining issue) separate transactions to acquire their holdings. The seven companies thus required an average of 66 purchases for the former and 67 purchases for the latter. For the two largest issues, the fourteen companies studied required a total of 1,301 (\$140,000,000 A. T. & T. issue) and 1,409 (\$130,000,000 Philadelphia Electric issue) separate transactions, an average of 93 purchases for the former and 101 purchases for the latter. More complete data on the size and number of transactions are presented in Table 8.⁸

^{7a} These are the same twenty-six companies covered in the tables of Part 10-A of the Hearings before the Temporary National Economic Committee: Life Insurance; Operating Results.

⁸ The questionnaire by Morgan Stanley & Co., Inc., (see footnote 2) requested each dealer to state the number of his transactions for each issue. The total number of transactions for all dealers was as follows: for the U. S. Steel 3½'s of 1948, 17,096; for

TABLE 8.—Number of purchases made by selected life insurance companies in acquiring their bondings of five registered bond issues from date of issue to December 31, 1938

	Toledo Edison 3¼'s, '68	Atlantic Refining 3's, '63	U. S. Steel 3¼'s, '48	A. T. & T. 3¼'s, '66	Philadelphia Electric 3¼'s, '67
1. Date of Public Offering.....	8-10-38	9-15-38	6-2-38	12-2-36	3-11-37
2. Amount of Issue (000).....	\$30,000	\$25,000	\$100,000	\$140,000	\$130,000
3. Number of Companies Analyzed.....	7	7	8	14	14
4. Amount of Purchases (000).....	\$8,983	\$7,210	\$11,574	\$64,489	\$60,866
5. Number of Purchases.....	463	471	650	1,301	1,409
6. Average Number of Purchases.....	66	67	81	93	101
7. Average Size of Purchases.....	\$19,400	\$15,300	\$17,800	\$49,600	\$43,200

Source: Compiled from Part 3 of Schedule D of the annual reports prepared on the Convention Form. The insurance companies included in the tabulations are listed in the table constituting Appendix I.

Most of the individual purchases were made for relatively small amounts. A detailed table of purchases arranged in a frequency distribution by size of purchase constitutes Appendix I to this memorandum, but the findings may be summarized here for the largest and the smallest issues studied.

TABLE 9.—Condensed frequency distribution of insurance company purchases, by size of purchase, of Atlantic Refining and A. T. & T. bonds

Size of Individual Purchase	\$25,000,000 Atlantic Refining purchases		\$140,000,000 A. T. & T. purchases	
	Percent of total number	Percent of total amount	Percent of total number	Percent of total amount
Less than \$10,000.....	58.5	16.6	29.0	2.8
\$10,000-\$49,000.....	34.0	38.6	46.2	16.7
\$50,000-\$99,000.....	5.4	22.9	9.9	12.1
\$100,000-\$499,000.....	2.1	21.9	13.7	53.2
\$500,000 and over.....			1.2	15.2
Total.....	100.0	100.0	100.0	100.0

Source: See Appendix I.

The analysis disclosed a total of 4,294 separate purchases by the major life insurance companies for the five issues studied. There were 1,479 transactions (more than one-third of the total) in blocks of \$5,000 or less, including 32 purchases in blocks of \$1,000 and 142 in blocks of \$2,000. More than three-quarters of the total number of purchases were in amounts of less than \$30,000, though this group accounted for only 21 per cent of the total purchased. Most purchases were for round amounts. With 1,136 purchases at \$5,000, \$42 at \$10,000, 247 at \$15,000, 195 at \$20,000, and 353 at \$25,000, a total of 2,773 purchases, almost two-thirds of the total number of purchases, is accounted for.

(b) *The rate of insurance company purchases.*—The annual reports prepared by insurance companies on the Convention Form require the date of acquisition for all security purchases. The analysis shows that the date of acquisition reported seems to have been in almost all cases the date on which the securities were delivered. For the five issues covered, a comparison of the date of acquisition reported by the twenty-six companies with the offering date (as shown by the prospectus), and the delivery date (as reported in the daily press), indicates that (a) in no case did the acquisition date coincide with the offering date, (b) in only one case, and then only for one company, was the acquisition date earlier than the delivery date, and (c) in all the other cases the first acquisition dates correspond with the delivery dates. The available data do not indicate the date of payment by the life insurance companies. It thus appears that the

the A. T. & T. 3¼'s of 1966, 17,786; and for the Philadelphia Electric 3¼'s of 1967, 8,450. There is no indication that the total number of transactions as reported by dealers and the total number of acquisitions as compiled from insurance company records are on the same basis.

companies define securities *acquired* as securities *delivered*, rather than as ordered or paid for.⁹

A definitive study of the rate of insurance company purchases is, therefore, impossible. For there is no correspondence between orders and deliveries; one day's deliveries may include several days' orders, and conversely. Furthermore, the time between the date of offering and the date of delivery varies for different issues. The difference was sixteen days for the A. T. & T. bonds and only two days for the Toledo Edison bonds. The data do indicate, however, the importance of insurance company sales in making and supporting a market for publicly offered securities.

(i) During the first week after the first delivery date—the purchase orders may well have been much more concentrated—the insurance companies in the sample studied purchased from 9 per cent of the U. S. Steel bonds to 33 per cent of the A. T. & T. bonds.

TABLE 10.—*Purchases by selected insurance companies of five registered bond issues within the first week after public offering*

Issue	Number of companies	Number of purchases	Per cent of total issue purchased
Toledo Edison.....	7	344	19.2%
Atlantic Refining.....	7	462	23.5
U. S. Steel.....	7	579	9.2
A. T. & T.....	13	1,072	32.9
Philadelphia Electric.....	13	1,079	24.4

Source: See Appendix II.

As has already been mentioned, the U. S. Steel bonds were regarded as a "banking issue." Therefore, if this offering be excluded, the sample of insurance companies studied took within one week of the offering date¹⁰ from one-fifth to one-third of the issues.

(ii) The size of the individual purchases during the first week appears to be smaller than purchases consummated in later weeks.

TABLE 11.—*Size of purchases of five registered bond issues at various times after public offering*

[Thousands of dollars]

Issue	First week	Remainder of first quarter	Second quarter	Third quarter
Toledo Edison.....	\$16.8	\$24.0	\$48.3	-----
Atlantic Refining.....	15.4	8.9	-----	-----
U. S. Steel.....	15.9	77.7	114.3	-----
A. T. & T.....	43.0	90.6	127.5	\$146.8
Philadelphia Electric.....	29.5	89.7	97.1	110.8

Source: See Appendix II.

⁹ The dates for the five issues were as follows:

Issue	Date of offering prospectus	Date of delivery mentioned in advertisement	First acquisition date reported by any insurance company
Toledo Edison.....	8-10-38	8-12-38	8-12-38
Atlantic Refining.....	9-15-38	9-19-38	9-19-38
U. S. Steel.....	6- 2-38	6- 7-38	6- 7-38
A. T. & T.....	12- 2-36	12-18-36	12-18-36
Philadelphia Electric.....	3-11-37	3-19-37	3-19-37

* Except that the Pacific Mutual Life Insurance Company reported a purchase on June 3rd.

The explanation for the small size of purchases during the first week probably rests upon the fact that the insurance companies spread their purchases among the members of the distributing group.

(c) *The source of insurance company purchases.*—It has been indicated in Section 1 that re-sales by banks and trust companies which bought directly from the distributing group constituted a substantial part (28 percent to 44 percent) of the respective issues. Examination of life insurance company purchases shows that:

(i) Purchases from banks were larger than purchases from dealers and underwriters.

(ii) The smaller insurance companies make a larger percentage of their purchases from banks and trust companies than do the largest insurance companies falling within the sample of the 26 largest legal reserve life insurance companies.

(iii) The sales by banks to the life insurance companies within the sample of insurance companies studied were highly concentrated. Only eighteen banks were represented. These eighteen banks made 116 sales aggregating \$10,189,000. Five of these banks accounted for more than 70 percent of the total; and two of them—the New York Trust Co. and the Bankers Trust Co.—for 48 percent. The position of the New York Trust Co. is due entirely to its nine sales of A. T. & T. debentures to the New York Life Insurance Co. in the amount of \$2,519,000. The sales by the Bankers Trust Co., on the other hand, were more widely distributed. Bankers Trust Co. made thirty-one sales amounting to \$2,212,000, and dealt in all five of the issues.

TABLE 12.—*Number and amount of sales of five registered bond issues by banks to life insurance companies from date of offering to Dec. 31, 1938*

Bank	Number of sales		Amount of sales	
	Number	%	Amount	%
New York Trust Co.....	10	8.6	\$2,647	26.0
Bankers Trust Co.....	31	26.7	2,212	21.7
First National Bank of Chicago.....	14	12.1	882	8.7
Chase National Bank.....	10	8.6	714	7.0
Anglo-California National Bank of California.....	8	6.9	850	8.3
Total: 5 Banks.....	73	62.9	7,305	71.7
Sales by 13 Other Banks.....	43	37.1	2,888	28.3
Total: All Banks.....	116	100.0	10,193	100.0

Source: Compiled from Part 3 of Schedule D of the annual reports on the Convention Form of the same life insurance companies covered by Appendix I.

3. AMOUNT OF INSURANCE COMPANY HOLDINGS OF FIVE REGISTERED BOND ISSUES ON DECEMBER 31, 1938

There has been much discussion of the extent of holdings of securities by institutions, and particularly by life insurance companies.¹⁰ Earlier sections of this memorandum indicated the importance of institutional purchases of the registered bond issues studied. In particular, they indicated the role of the insurance companies as final investors. After the banks, insurance companies were the largest purchasers from the distributing group of the registered bond issues studied, accounting for an average of 38.1 per cent of all sales. They added to these holdings immediately. The banks and trust companies that had purchased from the distributing group almost immediately disposed of a substantial part of their holdings, with insurance companies as the largest customers. Buying in relatively small lots, life insurance companies engaged in a large number of separate transactions. They continued to purchase these issues after the public offering. The amounts of their holdings at various dates may be shown as follows:

¹⁰ See, for example, Part 10-A of the Hearings Before The Temporary National Economic Committee: Life Insurance: Operating Results, p. 125. It was there shown that the twenty-six largest legal reserve life insurance companies domiciled in the United States purchased almost one quarter of the total amount of corporate bonds and notes issued

TABLE 13.—Percentages of five registered bond issues bought or held by insurance companies at selected dates

Issue	Percentage of issue purchased from distributing groups	Percentage of issue purchased from banks and trust cos. ¹	Percentage of issue held on Dec. 31, 1938
Toledo Edison \$30,000,000 3½'s of '68.....	26.7	4.9	46.1
Atlantic Refining \$25,000,000 3's of '53.....	29.6	4.8	40.6
U. S. Steel \$100,000,000 3¼'s of '48.....	16.5	0.7	20.9
A. T. & T. \$140,000,000 3¼'s of '66.....	36.0	(?)	56.2
Philadelphia Electric \$130,000,000 3½'s of '67.....	45.8	(?)	58.6

¹ Under orders dated not later than one week after public offering.² Not available.

The distribution of these holdings by insurance companies is shown in Table 14. The twenty-six largest legal reserve life insurance companies held from 70 per cent (U. S. Steel) to 88 per cent (Philadelphia Electric) of the total amounts held by all insurance companies.

TABLE 14.—Amounts and percentages of five registered bond issues held by insurance companies on December 31, 1938

[Amounts in thousands of dollars]

Holders	Toledo Edison 3½'s of '68		Atlantic Refining 3's of '53		U. S. Steel 3¼'s of '48		A. T. & T. 3¼'s of '66		Philadelphia Electric 3½'s of '67	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
5 largest life insurance companies ¹	\$5,000	16.7	\$5,354	21.4	\$4,345	4.3	\$49,886	35.6	\$44,676	34.4
21 other large life insurance companies.....	5,533	18.4	2,501	10.0	9,559	9.6	15,642	11.2	22,653	17.4
Total: 26 selected life insurance companies ²	10,533	35.1	7,855	31.4	13,904	13.9	65,528	46.8	67,329	51.8
All other life insurance companies.....	2,206	7.3	1,023	4.1	936	0.9	9,036	6.5	6,025	4.6
All other insurance companies.....	1,100	3.7	1,264	5.1	6,126	6.1	4,078	2.9	2,887	2.2
Total: all insurance companies.....	13,839	46.1	10,142	40.6	20,966	20.9	78,642	56.2	76,241	58.6

¹ Metropolitan Life Insurance Company, Prudential Insurance Company, New York Life Insurance Company, Equitable Life Assurance Society, and Mutual Life Insurance Company of New York.² See Part 10-A of the Hearings Before the Temporary National Economic Committee: Life Insurance: Operating Results, pp. III, IV.Source: Compiled from Poor's *Institutional Holdings of Securities* (1939).

In the years 1934 to 1936, inclusive; and that they purchased almost one-half of all the bonds and notes issued in the years 1937 and 1938.

A compilation was made by Merrill Lynch & Co., Inc., on August 2, 1939, of institutional holdings, based upon Poor's *Institutional Holdings of Securities* (1939). Only securities issued since 1935 were studied. Institutions were found to hold 52.5 per cent of the 87 electric power and gas company bond issues studied; 54.3 per cent of the 10 telephone issues studied; and 28.3 per cent of the 37 industrial issues studied. The data are incomplete because many institutions do not report or itemize their holdings. The percentages, therefore, understate the relative importance of institutional holdings.

APPENDIX I

Frequency distribution of purchases of five registered bond issues, by size of purchase, by selected life insurance companies, from date of offering to December 31, 1938

[Amounts purchased in thousands of dollars]

Date of Offering Number of Companies	Size of purchase (in thousands)	Toledo Edison Co. \$30,000,000 1st mtg. 3 1/2's of 1938						Atlantic Refining Co. \$25,000,000 deb. 2's of 1933						U. S. Steel Corp. \$100,000,000 deb. 3 1/2's of 1946						American Tel. & Tel. Co. \$140,000,000 deb. 3 1/2's of 1936						Philadelphia Electric Co. \$130,000,000 1st mtg. 3 1/2's of 1937						Total		
		8/10/38 7 1		9/15/33 7 1		6/2/38 3 1		11/2/36 14 1		3/11/37 14 1																								
		Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount							
Less than 10	247	53.3	\$3,052	11.7	276	58.5	\$1,194	16.6	352	54.1	\$1,544	13.3	377	29.0	\$1,777	2.8	296	21.0	\$1,430	2.4	1,548	36.1	519	29.8	4,599	7.6	1,136	26.5	243	17.3	5,845	9.6	13,156	8.4
10-19	118	25.5	1,350	14.8	90	20.1	1,088	14.8	136	23.0	1,654	14.3	354	27.2	4,121	6.4	419	29.8	5,599	7.6	1,136	26.5	243	17.3	5,845	9.6	1,136	26.5	243	17.3	5,845	9.6	13,156	8.4
20-29	40	8.6	320	10.2	47	10.1	1,098	14.8	75	11.5	1,681	14.5	161	12.4	3,642	5.6	243	17.3	5,845	9.6	1,136	26.5	243	17.3	5,845	9.6	1,136	26.5	243	17.3	5,845	9.6	13,156	8.4
30-39	6	1.3	210	2.3	8	1.7	325	4.6	13	2.0	430	3.7	55	4.2	1,758	2.7	72	5.1	2,187	3.6	155	3.6	76	1.8	2,187	3.6	155	3.6	76	1.8	2,187	3.6	13,156	8.4
40-49	3	0.6	125	1.4	3	0.6	325	4.6	11	1.7	445	3.9	31	2.4	1,301	2.0	23	1.6	924	1.5	76	1.8	23	1.6	924	1.5	76	1.8	23	1.6	924	1.5	13,156	8.4
50-59	14	3.1	712	7.9	2	0.6	633	8.9	14	2.2	700	6.1	73	5.6	3,679	5.7	138	9.8	6,906	11.3	251	5.8	138	9.8	6,906	11.3	251	5.8	138	9.8	6,906	11.3	12,630	8.2
60-69	5	1.1	370	2.2	1	0.2	527	7.3	3	0.5	185	1.6	15	1.1	2,268	3.6	22	1.6	1,650	2.7	70	1.6	22	1.6	1,650	2.7	70	1.6	22	1.6	1,650	2.7	1,928	1.3
70-79	5	1.1	370	4.1	7	1.5	527	7.3	3	0.5	376	3.2	31	2.4	2,296	3.6	22	1.6	1,650	2.7	70	1.6	22	1.6	1,650	2.7	70	1.6	22	1.6	1,650	2.7	1,928	1.3
80-89	4	0.9	328	3.7	4	0.9	340	4.7	1	0.1	80	0.7	6	0.5	481	0.7	4	0.3	338	0.6	19	0.4	4	0.3	338	0.6	19	0.4	4	0.3	338	0.6	1,667	1.0
90-99	1	0.2	98	1.1	1	0.2	90	1.3	4	0.3	381	0.6	4	0.3	381	0.6	4	0.3	386	0.6	19	0.4	4	0.3	386	0.6	19	0.4	4	0.3	386	0.6	1,667	1.0
100-199	14	3.1	1,633	18.2	8	1.7	1,027	14.2	21	3.2	3,460	21.3	108	8.3	13,098	20.3	103	7.3	11,831	19.4	254	5.9	103	7.3	11,831	19.4	254	5.9	103	7.3	11,831	19.4	20,049	19.6
200-299	7	1.5	1,608	17.9	1	0.2	200	2.8	5	0.8	1,170	10.1	37	2.8	8,627	13.4	51	3.6	11,448	18.8	101	2.4	51	3.6	11,448	18.8	101	2.4	51	3.6	11,448	18.8	23,053	15.0
300-399	1	0.2	400	4.5	1	0.2	350	4.9	1	0.1	850	7.3	18	1.4	6,185	9.6	9	0.6	2,770	4.6	28	0.7	9	0.6	2,770	4.6	28	0.7	9	0.6	2,770	4.6	9,305	6.1
400-499	1	0.2	400	4.5	1	0.2	350	4.9	1	0.1	850	7.3	15	1.2	6,382	9.9	3	0.2	1,220	2.0	19	0.4	3	0.2	1,220	2.0	19	0.4	3	0.2	1,220	2.0	9,305	6.1
500 and over	1	0.2	400	4.5	1	0.2	350	4.9	1	0.1	850	7.3	16	1.2	6,820	15.2	13	0.9	8,743	14.4	30	0.7	13	0.9	8,743	14.4	30	0.7	13	0.9	8,743	14.4	19,413	12.7
Total	463	100.0	8,983	100.0	471	100.0	67,210	100.0	650	100.0	11,574	100.0	1,301	100.0	64,489	100.0	1,409	100.0	60,866	100.0	4,294	100.0	0	4,294	100.0	0	153,122	100.0						

¹⁷ These seven companies included in the tabulation for the Toledo Edison Co. 1st mtg. 3½'s of 1968 were: New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Northwestern Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., and Provident Mutual Life Insurance Co.

¹⁸ For the Atlantic Refining Co. deb. 3's of 1953, the seven companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, The Mutual Life Insurance Co. of New York, John Hancock Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., The Union Central Life Insurance Co., and Provident Mutual Life Insurance Co.

¹⁹ For the U. S. Steel Corp. deb. 3½'s of 1948, the eight companies included were: The Prudential Insurance Co. of America, The Travelers Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., Provident Mutual Life Insurance Co., The Lincoln National Life Insurance Co.

²⁰ For the American Telephone and Telegraph Co. debenture 3½'s of 1956, the fourteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Travelers Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., Provident Mutual Life Insurance Co., The Lincoln National Life Insurance Co.

²¹ For the Philadelphia Electric Co. 1st mtg. 3½'s of 1957, the fourteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Northwestern Mutual Life Insurance Co., John Hancock Mutual Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., Provident Mutual Life Insurance Co., and The Lincoln National Life Insurance Co.

Source: Compiled from Part 3 of Schedule D of the annual reports of 28 selected life insurance companies on the Convention Form. These 26 companies are the same as those included in Part 10-A of the Hearings Before the Temporary National Economic Committee: Life Insurance: Operating Results, February 12, 1940. The number of companies included in each tabulation is less than 28, since not all the companies furnished the data in useable form, and not all the companies purchased each issue.

¹ The companies are required to furnish the date of acquisition for securities. For these issues, the earliest dates of acquisition for the five issues correspond with the delivery dates mentioned in the offering announcements, rather than with the dates of the respective offering prospectuses. See footnote 9.

² The seven companies included in the tabulation for the Toledo Edison Co. 1st mtg. 3/23 of 1965 were: New York Life Insurance Company, The Equitable Life Insurance Society of the United States, The Mutual Life Insurance Company of New York, The Northwestern Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., and Provident Mutual Life Insurance Co.

³ For the Atlantic Refining Company deb. 3/5 of 1963, the seven companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, The Mutual Life Insurance Co. of New York, John Hancock Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., The Union Central Life Insurance Co., and Provident Mutual Life Insurance Co.

⁴ For the U. S. Steel Corp. deb. 3/4 of 1948, the seven companies included were: The Prudential Life Insurance Co. of America, The Travelers Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., and Provident Mutual Life Insurance Co. Other tables in the Appendix dealing with this issue were based upon eight companies. This tabulation is based upon seven, since the dates of purchase by The Lincoln National Life Insurance Co. were shown only by months, and not by days. A similar tabulation applies to footnotes 5 and 6.

⁵ For the American Telephone & Telegraph Co. debenture 3/4 of 1966, the thirteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Co., The Penn Mutual Life Insurance Co., The Equitable Life Assurance Society of America, The Mutual Life Insurance Co., The Lincoln National Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., The Penn Mutual Life Insurance Co., and Provident Mutual Life Insurance Co.

⁶ For the Philadelphia Electric Co. 1st mtg. 3/4 of 1967, the thirteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Company, The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Northwestern Mutual Life Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., and Provident Mutual Life Insurance Co. The Lincoln National Life Insurance Co. was not included. See footnote 4.

⁷ Saturday.

Sources: Compiled from Part 3 of Schedule D of the annual reports of 26 selected life insurance companies on the Convention Form. These 26 companies are the same as those included in Part 10-A of the Hearings Before the Temporary National Economic Committee: Life Insurance: Operating Results, February 12, 1940. The number of companies included in each tabulation is less than 26, since not all the companies furnished the data in useable form, and not all the companies purchased each issue.

APPENDIX III

Number and amount of purchases of five registered bond issues by selected life insurance companies from date of offering to December 31, 1938

[Amounts in thousands of dollars]

Purchaser ¹	Toledo Edison Co. \$30,000,000 1st mtg. 3½'s of 1968		Atlantic Refining Co. \$25,000,000 deb. 3's of 1953		U. S. Steel Corp. \$100,000,000 deb. 3½'s of 1948		American Tel. & Tel. \$140,000,000 deb. 3½'s of 1966		Philadelphia Electric \$130,000,000 1st mtg. 3½'s of 1967		Total	
	Number of purchases	Amount purchased	Number of purchases	Amount purchased	Number of purchases	Amount purchased	Number of purchases	Amount purchased	Number of purchases	Amount purchased	Number of purchases	Amount purchased
Metropolitan.....			69	\$1,628			121	\$9,591	187	\$10,295	377	\$21,514
Prudential.....			132	2,726	177	\$4,345	202	9,309	232	9,000	743	25,980
New York Life.....	119	\$3,000					171	13,870	139	9,997	429	26,867
Equitable, N. Y.....	67	1,500					138	11,006	93	11,716	298	24,222
Mutual, N. Y.....	56	500	103	1,000			166	5,000	162	3,668	487	10,168
Northwestern.....	41	1,203							3	345	44	1,548
Travelers.....					48	1,000	58	2,000			106	3,000
John Hancock.....			52	686	95	2,358	127	6,494	62	3,500	336	13,038
Penn Mutual.....					55	515	80	2,000	120	4,000	255	6,515
Mutual Benefit.....	46	750	47	500			79	2,000	105	2,985	277	6,265
Massachusetts Mutual.....	69	1,000			83	1,025	3	250	122	2,500	277	4,775
Aetna.....					64	1,000	31	1,000	77	1,500	172	3,500
Union Central.....			24	170			24	198	37	500	85	868
Provident Mutual.....	65	1,000	44	500	82	1,005	78	947	53	510	322	3,962
Lincoln National.....					46	326	23	224	17	350	86	900
Total.....	463	8,983	471	7,210	650	11,574	1,301	64,489	1,409	60,866	4,294	153,122

¹ The names of the various life insurance companies included have been abbreviated. For their full names, see footnotes to Appendix I; for complete names with addresses, see Hearings, Part 10-A, p. III. The companies are arranged in approximate order of size.

Source: Compiled from Part 3 of Schedule D of the annual reports of selected life insurance companies on the Convention Form. The basic sample consisted of the 26 life insurance companies included in Part 10A of the Hearings Before the Temporary National Economic Committee: Life Insurance: Operating Results. The number of companies in these tabulations is less than 26, since not all the companies furnished the data in useable form, and not all the companies purchased each issue.

APPENDIX IV

Purchases of five registered bond issues by selected life insurance companies from investment bankers¹ and from banks from date of offering to December 31, 1938

[Amounts in thousands of dollars]

Issue	Purchased from dealers				Purchased from banks				Total: All vendors			
	Number of purchases		Amount purchased		Number of purchases		Amount purchased		Number of purchases		Amount purchased	
	Num-ber	Per-cent	Amount	Per-cent	Num-ber	Per-cent	Amount	Per-cent	Num-ber	Per-cent	Amount	Per-cent
1. Toledo Edison Co. ² 1st mtg. 3½'s of '68.....	446	96.3	\$8,268	92.5	17	3.7	\$715	7.5	463	100.0	\$8,983	100.0
2. Atlantic Refining Co. ³ Deb. 3's of '53.....	446	94.7	5,955	82.6	25	5.3	1,255	17.4	471	100.0	7,210	100.0
3. U. S. Steel Corp. ⁴ deb. 3½'s of '48.....	645	99.2	11,434	98.8	5	0.8	140	1.2	650	100.0	11,574	100.0
4. American Tel. & Tel. Co. ⁵ deb. 3½'s of '66.....	1,257	96.6	59,363	92.1	44	3.4	5,126	7.9	1,301	100.0	64,489	100.0
5. Philadelphia Electric Co. ⁶ 1st mtg. 3½'s of '67.....	1,384	98.2	57,913	94.8	25	1.8	2,953	5.2	1,409	100.0	60,866	100.0
Total.....	4,178	97.3	142,933	93.2	116	2.7	10,189	6.8	4,294	100.0	153,122	100.0

¹ Including security dealers.

² The seven companies included in the tabulation for the Toledo Edison Co. 1st mtg. 3½'s of 1968 were: New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Northwestern Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., and Provident Mutual Life Insurance Co.

³ For the Atlantic Refining Co. Deb. 3's of 1953, the seven companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, The Mutual Life Insurance Co. of New York, John Hancock Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., The Union Central Life Insurance Co., and Provident Mutual Life Insurance Co.

⁴ For the U. S. Steel Corp. deb. 3½'s of 1948, the eight companies included were: The Prudential Insurance Co. of America, The Travelers Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., Provident Mutual Life Insurance Co., and The Lincoln National Life Insurance Co.

⁵ For the American Telephone and Telegraph Co. Debenture 3½'s of 1966, the fourteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Travelers Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., Provident Mutual Life Insurance Co., The Lincoln National Life Insurance Co.

⁶ For the Philadelphia Electric Co. 1st mtg. 3½'s of 1967, the fourteen companies included were: Metropolitan Life Insurance Co., The Prudential Insurance Co. of America, New York Life Insurance Co., The Equitable Life Assurance Society of the United States, The Mutual Life Insurance Co. of New York, The Northwestern Mutual Life Insurance Co., John Hancock Mutual Life Insurance Co., The Penn Mutual Life Insurance Co., The Mutual Benefit Life Insurance Co., Massachusetts Mutual Life Insurance Co., Aetna Life Insurance Co., The Union Central Life Insurance Co., Provident Mutual Life Insurance Co., and The Lincoln National Life Insurance Co.

Source: Compiled from Part 3 of Schedule D of the annual reports of 26 selected life insurance companies on the Convention Form. These 26 companies are the same as those included in Part 10-A of the Hearings Before the Temporary National Economic Committee: Life Insurance: Operating Results, February 12, 1940. The number of companies included in each tabulation is less than 26, since not all the companies furnished the data in useable form, and not all the companies purchased each issue.

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